SUPREME COURT OF THE UNITED STATES.

No. 304.

THE UNITED STATES, APPELLANTS,

vs.

THE SCHOONER WATCHFUL AND CARGO.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Libel	1	1
Admiralty warrant	3	2
Prize commissioners' report	5	3
Deposition of J. G. Barclay	10	4
Peter Gumps	18	7
Papers and documents found on board	23	9
Claim of John G. Wallis	40	16
Bond for costs	42	16
Cause fixed for trial	43	17
Order to open sealed papers	44	17
Cause continued	45	18
Cause continued	45	18
Hearing and continuance	46	18
Note of evidence	46	18
Order and continuance	46	18
Hearing and continuance	47	18
Hearing and submission	47	18
Order for a survey	48	19
Order, cause referred to R. Swain for course of schooner	48	19
Report of survey	49	19
Report as to course	50	20
Bill for survey	52	20
Bill for report of course	53	20
Decree of condemnation	53	21
Rule and grounds for new trial	54	21
Rule for re-hearing	59	23
Affidavit of J. G. Wallis	60	23
Report of C. E. Whitney as to course	62	24
Hearing, rule, and submission	68	26

	Original.	Print.
Statement of Lieutenant Kellogg as to course	69	26
Order for re-hearing, and further proof to claimant	72	27
Testimony for claimant and documents	72	28
Do	82	31
Do	89	34
Hearing and submission	94	36
Note of evidence	95	36
Judgment of restitution	95	36
Petition for appeal and order	96	37
Citation of appeal	99	38
Motion to bond and submission	101	38
Order refusing motion	102	39
Motion and order to bond	103	39
Notices to appraisers	104	39
Oath of appraisers	105	40
Report of appraisers, and bill	106	40
Rule on claimant to sell	108	41
Release bond of claimant	108	41
Order approving bond	114	43
Order to issue execution for costs	114	44
Agreement relative to appeal	115	44
Clerk's certificate	116	44

1 United States district court, eastern district of Louisiana, in prize.

THE UNITED STATES OF AMERICA
against
THE SCHOONER WATCHFUL, HER TACKLE, &c., and cargo.
} Filed Oct. 1st, 1864.

To the honorable Edward H. Durell, judge of the district court of the United States for the eastern district of Louisiana:

The libel of information in prize filed herein by Rufus Waples, attorney of the United States for the eastern district of Louisiana, on behalf of said libellants and of the naval captors in interest, respectfully represents to this honorable court:

First. That the schooner or vessel called the Watchful, with the goods, wares, and merchandise laden therein, was captured as lawful prize on or about the 27th day of September, 1864, and brought to this port by the United States steamer Arkansas, David Cate, United States navy, commanding.

Second. That the schooner or vessel called the Watchful, with the goods, wares, and merchandise laden therein, were at the time of such capture, and are now, rightfully subject to such capture, and were and are lawful prize, and as such should be condemned and forfeited to the use of the libellants.

Third. That the said schooner or vessel called the Watchful, with the goods, wares, and merchandise laden therein, have been brought to the port of New Orleans, and are now at said port and within the jurisdiction of this honorable court.

Fourth. That, by reason of the premises, the said schooner or vessel called the Watchful, her tackle, apparel, and furniture, with the goods, wares, and merchandise laden therein, became and are liable to condemnation and forfeiture as lawful prize, and should be condemned and forfeited as lawful prize to the libellants.

That all and singular the premises are and were true, and within the jurisdiction of this honorable court; in attestation whereof, the said attorney exhibits the said vessel's papers, and the documents, &c., found on board, together with the testimony of the witnesses, duly taken in preparatorio by the prize commissioners appointed by this honorable court, which are or will be duly filed in the registry of this court.

Wherefore the said attorney of the United States, on behalf of the said United States, prays the usual process and monition of this honorable court against the said schooner or vessel called the Watchful and her tackle, apparel, and furniture, and the goods, wares, and merchandise laden therein, in this behalf to be made, and that all persons interested in the said vessel and her cargo may be cited to answer in the premises; and that all due proceedings being had therein, this honorable court may be pleased to decree for the condemnation and forfeiture aforesaid, and that the said schooner, her tackle, apparel, and furniture, with the goods, wares, and merchandise laden

therein, may be condemned as lawful prize, to the use of the said United States.

Dated New Orleans, October 1st, 1864.

(Sig.) RUFUS WAPLES,
United States District Attorney.

2 *Order.*

Let admiralty process issue as prayed for.
October 5th, 1864.

K. LOEW, *D'y Clerk.*

Indorsed: In prize, U. S. district court.—The United States *vs.* The Shcooner Watchful, her tackle, &c., and cargo.—Libel.—Rufus Waples, U. S. district attorney—No. 7914.—Filed October 5th, 1864.

3 The President of the United States of America to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize and into your possession take the schooner Watchful, her tackle, &c., and cargo, now libelled by the United States of America, for the causes set forth in the libel now pending in the district court of the United States for the eastern district of Louisiana; that you do cite and admonish the owner or owners, and all and every other person or persons having or pretending to have any right, title, or interest in or to the same, to be and appear before a district court of the United States for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said schooner Watchful, &c., and cargo, should not be condemned as prize forfeited to the United States, sold, and the proceeds thereof distributed according to law, and agreeably to the prayer of the libellant; and how you have executed this warrant, that you make return according to law.

Witness the honorable Edward H. Durell, judge of the said court, at New Orleans, this 5th day of October, 1864, and the 89th year of the independence of the United States.

[SEAL.] K. LOEW, *D'y Clerk.*

4 *Marshal's return.*

Received October 5th, 1864, and in obedience to the within warrant seized and took into my possession the within-named schooner Watchful, her tackle, &c., and cargo. Posted copies of this warrant, the libel, and order of the judge on the door of the court-house, and published monition in the True Delta, a daily newspaper printed and published in New Orleans, on the 6, 12, 18, 22 Oct., 1864

CUTHBERT BULLITT, *U. S. Marshal,*
By A. BOISBLANC, *D'y U. S. Marshal.*

Filed Oct. 25th, 1864.

Indorsed: United States district court, No. 7914.—United States *vs.* Schooner Watchful, &c., and cargo.—ad. warrant.—Marshal's return.

5 In the matter of the schooner Watchful and cargo, a prize.

U. S. PRIZE COMMISSIONERS' OFFICE,
New Orleans, October 10th, 1864.

To the Hon. E. H. Durell, judge of the district court of the United States for the eastern district of Louisiana:

The undersigned, prize commissioners of this honorable court, respectfully report that on the 5th day of October, A. D. 1864, they received notice from Frank H. Beers, acting ensign of the U. S. st'r Arkansas, of which David Cate is commander, that the said Frank H. Beers brought with him into this city a certain vessel called the Watchful, and cargo, as a prize of the U. S. st'r Arkansas; that said schooner had been captured on Tuesday, the 27th day of September, 1864, on or about 7 o'clock p. m., off Ship Island shoals, Gulf of Mexico, for violating the rules governing the blockade at present instituted by the United States government, and the said Frank H. Beers and a prize crew had been appointed by said Commander David Cate to bring said prize into this port and report her, as required by the law and the usages in such cases observed; that the said prize master did seasonably deliver to us all such papers, passes, documents, &c., as were found on board the captured schooner, and having a reference to and a connexion with the captured
6 property, and which were in the possession, custody, or power of the captors, which documents were by one of us prize commissioners regularly marked and numbered from A to N, inclusive, being fourteen in number, and the said prize master made a deposition identifying said documents, and complying in all respects with the law, which deposition and the said documents are herewith transmitted to your honorable court; that on the same day the said prize master delivered over to the custody of the marshal the following persons captured with said prize and sent in as witnesses, two of whom were examined, the other being almost deaf: 1st, J. O. Barclay, captain of said vessel; 2d. Peter Gumps, steward; that we examined said two persons in preparatorio upon the standing interrogatories which have been adopted by the honorable court, as the same are found in Upton's Work on Prize Courts, page 479, 3d edition; that said witnesses, being examined separately on
7 oath, and not in presence of each other, and unattended by counsel, after each had taken the necessary and prescribed oath to make true answer, &c., which answers were written down as required by law, each one separately, to each interrogatory, and when entirely answered the said answers were signed by each witness, respectively, as the same are now transmitted to your honorable court; that we proceeded aboard of said vessel, the Watchful, and examined her condition, and that it was impossible to state whether bulk had been broken or not; that the cargo consists of 10,000 feet lumber, 40 bbls. petroleum oil, and the schooner is reported to have also on board 250 cases of muskets, and that it is impossible to ascertain exactly the nature or quality of the cargo without an unloading and unlivery of the same, which proceeding we now recommend to the honorable court.

All of which, including the deposition of said F. H. Beers, with the documents by him identified, and the answers to the inter-
8 rogatories taken as above, are now securely sealed, and are hereby submitted to this honorable court, and deposited in its custody.

T. B. THORPE,
D. AUGUSTIN,
U. S. Prize Commissioners.

9 District court of the United States for the eastern district of Louisiana.

In the matter of schooner Watchful and her cargo, a prize.

Frank H. Beers, prize master of the sch'r Watchful and act. ensign U. S. N., detached from the U. S. st'r Arkansas, of which David Cate is commander, being duly sworn, deposes and says that the sch'r Watchful was captured off Ship Island shoals, about 90 miles west of Southwest Pass, on the 27th day of Sept., 1864, about 7 p. m., for violating the rules governing the blockade at present instituted by the U. S. government. And said Frank H. Beers deposes and says that certain papers marked from A to N, inclusive, and further identified by the initial letters put on them by U. S. Prize Commissioner D. Augustin, are the same that were captured with the schooner Watchful, and that the deponent has delivered to the prize commissioner each and every document, paper, and writing whatsoever, received by him relating to the aforesaid captured property, in the same state and condition in which he received them, without "fraud, subornation or embezzlement," and without any addition or alterations whatsoever; and he does not know, nor does he believe, that any of the documents are missing or wanting.

And deponent further says that if at any time hereafter, and before the final condemnation or acquittal of said captured property, any further or other paper relating thereto shall be found or discovered to his knowledge, they shall be delivered up, or informrtion thereof given to the prize commissioners of this district or to the honorable court.

FRANK H. BEERS,
Act. Ensign U. S. N.

Sworn to and signed before me, United States prize commissioner, this the 5th day of October, 1864, New Orleans, La.

D. AUGUSTIN, *Prize Commissioner.*

10 District court of the United States, eastern district of Louisiana.

In the matter of the schooner Watchful and cargo, a prize.

Deposition of J. O. Barclay, master of the schooner, a witness produced, sworn, and examined in preparatorio on the 5th day of October, 1864, at the prize commissioners' office, on the standing interrogatories established by the district court of the United States for the eastern district of Louisiana, the said witness having been produced for the purpose of such examination by the prize master, in behalf of the captors of a certain vessel called the Sea Witch.

To the first interrogatory the witness answers:

1. I was born in Philadelphia, which is my place of residence;

lived there all my lifetime. I am a citizen of the United States; am married; have a wife and two children.

2. I was present at the capture of the Watchful.

11 3. The seizure was made at Ship Island shoals, about 70 miles from this city, on the 26th or 27th September last, and we were brought to this port. My vessel had no commission or letters to make prizes; she is a merchantman. We were taken because, they said, we had goods contraband of war on board.

4. We sailed under the American flag; had no other flag aboard the ship.

5. No resistance was made; I was running for the man-of-war; we were right on our course for the port of New Orleans. We were captured by the supply ship Arkansas, a U. S. naval vessel; no other ships in sight or signal distance at the time of capture; I saw none; my vessel is a merchant vessel.

6. Don't know that the Arkansas had any commission to make us a prize; I am of opinion, and will prove, that the Arkansas ought not to have taken me. The Watchful has never been seized to my knowledge.

7. The name of the captured vessel is the Watchful; the captain's name, my own, J. O. Barclay; I was appointed captain by John G. Wallis, the owner, at Philadelphia. I have known the Watch-

12 ful since August last; I took possession of her at New York. My fixed place of residence is Philadelphia with my family; I am an American citizen.

8. She is 200 tons burthen. The crew consisted in 7, all told, when we left New York and when taken—2 English, 4 Americans, and 1 Portuguese. They all came aboard at New York at the same time; I engaged them at New York. I was appointed captain of the Watchful by Mr. Wallis, in the city of Philadelphia, the vessel being at that time in the port of New York, where I engaged the crew.

9. I belonged to the crew as captain at the time of seizure. Neither myself or any of the crew had any interest in vessel or cargo.

10. I have known the vessel since August, as already stated; saw her first in New York; she carried no guns.

11. She was bound to New Orleans on the voyage in which she was taken. The voyage begun at New York and was to have ended at New Orleans the moment I discharged here. She carried

13 lumber, petroleum oil, and muskets on the voyage on which she was captured. The cargo was put aboard about 18th August, 1864; I know that she had aboard goods contraband of war during the last voyage—muskets are considered contraband of war. The Watchful had her regular clearance and register from the New York custom-house. I know nothing about passports or sea-briefs. I left with my vessel on the 27th August from the port of New York, bound to Matamoras; arrived at Matamoras about 27th Sept'r, 1864, as near as I recollect. Left Matamoras about 5 hours after my arrival there; could not remain there or discharge my cargo because the French had possession of the country, and sailed then direct for the port of New Orleans with the same cargo I had carried from New York, not a

single thing having been taken out. My object in sailing to Matamoras was to deliver the muskets to Cortinas.

12. The voyage began in New York and was to end at New Orleans; after I should have discharged my cargo at Matamoras, I was to come to New Orleans and sell my vessel here. I know
14 nothing of passports or sea-briefs. She had no other cargo than lumber, petroleum oil, and the muskets.

13. I have fully detailed the cargo she had when sailing from New York and when taken; the ship's manifest will fully disclose them.

14. J. G. Wallis is owner of vessel and cargo; know of no other owner; he engaged me, and appears to have entire control over vessel and cargo. Mr. Wallis is an American, a merchant of Philadelphia.

15. Know nothing of bills of sale of the vessel.

16. I have already answered that the cargo was put aboard in August last; know of no consignees; the owner, Mr. Morris, was to have met me in Matamoras.

17. No bills of lading except one for Mr. Wallis; it is in the hands of the prize master; the contents of the bill of lading were petroleum oil and lumber—the muskets were not mentioned.

18. This bill of lading was on board at the time of capture; also the letters of instructions from Wallis to me, the clearance and register; all those have been taken by the capturing vessel.

19. We were about 5 miles south of Ship Island shoals,
15 some 10 miles to the east of it; no charter party.

20. We had on board the clearance register, letters of instructions, and the bill of lading already mentioned, at the time of capture. No papers burnt or destroyed at all during the voyage.

21. I did not know that Matamoras was blockaded by the U. S. forces.

22. Matamoras was not blockaded by the U. S. forces when I arrived in the neighborhood, but was in possession of the French, which prevented me from entering.

23. My register had not been examined by any U. S. officers prior to the capture.

24. My vessel never attempted to run any blockade, and I certainly should not attempt to run the blockade established by my government. I never was within 100 miles of any blockaded port on my voyage. I have served three years in this war, have commanded one of the finest sloops in the U. S. navy, and am greatly mortified at being arrested and treated as a blockade runner.

25. The Watchful has never been condemned. She just came out of the lakes, and never had been at sea before.

16 26. I consider I would have made some $10,000 had I been able to discharge my muskets at Matamoras; otherwise, I have sustained no loss.

27. No insurance at all on vessel or cargo, so the owner told me.

28. Had I arrived at Matamoras the vessel and cargo would have belonged to Wallis.

29. Don't know about that question, except that the muskets came from Hamburg, and the oil was of American produce.

30. The vessel was loaded from the quay at New York.
31. Don't know.
32. No papers were delivered out of the vessel at all.
33. Bulk was not broken; we had no communication with the shore at all.
34. No passengers at all.
35. All the papers I had were true and fair, and related to the Watchful only.
36. She steered for New Orleans direct, when pursued and taken. Never altered her course upon the appearance of the man-of-war.
37. Know of no sale or transfer of the vessel.
38. No guns whatever mounted.
17 39. Had we arrived at Matamoras the vessel and cargo would have belonged to Mr. Wallis, and no one else.
40. My instructions were to discharge and deliver my muskets and other cargo at Matamoras after I should have received the pay for the same, and then sail to New Orleans, where the vessel would have been sold. The Watchful never sailed under the convoy of any armed vessel or vessels.
41. Never acted in concert with ships of war.
42 and 43. Never cruised against property and citizens of the United States.

J. O. BARCLAY.

Sworn to and subscribed before me.
New Orleans, 5th October, 1864.

D. AUGUSTIN, *U. S. Prize Commissioner.*
T. B. THORPE, *U. S. P. C.*

18 District court of the United States for the eastern district of Louisiana.

In the matter of the schooner Watchful and cargo, a prize.

Deposition of Peter Gumps, a witness produced, sworn, and examined in preparatorio, on the 5th day of October, in the year 1865, at the prize commissioners' office, on the standing interrogatories which have been established by the district court of the United States for the eastern district of Louisiana, the said witness having been produced for the purpose of such examination by Frank H. Beers, act. ensign U. S. N., in behalf of the captors of a certain vessel called the Watchful.

To the first interrogatory the witness answers:

1. I was born on the Madeira Islands; I live in New York, and have lived there about 14 years; I am not a citizen of the United States; I owe allegiance to the government of the Madeira Isles; I am married; my wife lives in New York.
2. I was present at the capture of the schooner and cargo.
19 3. The schooner was captured about 55 or 60 miles from the bar of the Mississippi river, steering an east course, about a

week ago. I don't remember the day. I don't know why the seizure was made.

4. We sailed under American colors and had none others on board.

5. No resistance was made at the time of capture. No guns fired. We were captured by the U. S. st'r Arkansas; there were no other vessels of any kind in sight at the time of capture. The captured vessel was a merchantman.

6. I don't know whether the capturing vessel had any commission to make prizes.

7. The schooner was named the Watchful; the captain's name was Batlee, or something like that. I have only known the captain since the day I came aboard. I have known the schooner for the same length of time, viz., 7 weeks. The captain says he belongs to Philadelphia, is married, and has a family living there.

8. The Watchful is of about 200 tons burthen. There were 7 men, all told, on board at the time of capture, and all belonged to the vessel. The captain hired the crew in New York.

20 9. I shipped in the capacity of steward. I do not know whether the captain or crew owned any part of the vessel or cargo. I had no interest in either.

10. I have known the vessel 7 weeks; first saw her in New York.

11. The schooner was bound for Matamoras, on the voyage on which we were captured. I shipped in New York to go to Hamburg, in Europe, at fifty-five dollars per month. All the crew shipped from Hamburg, from New York, about the middle of last August, 1864. Three days after we left New York the captain said, Boys, I don't intend to trust my life in the schooner to go to Hamburg; I am going to Matamoras; is it all right? The crew said they did not care, but as they had shipped for Hamburg, would prefer going there, and the schooner was then turned for Matamoras.

The day I went aboard I asked the mate what kind of cargo he had, and he said lumber and oil. The man-of-war that captured us said there were arms on board, but I did not know anything about their being there. The lumber covered the schooner, and it would have to be removed to see what was hidden beneath. I do not know

21 where or when the cargo was put on board, as I only came aboard about an hour before she sailed from New York. We did not touch at any port in coming out; we anchored off Matamoras 4 hours, and then we came direct on our voyage to the place where we were captured.

12. Don't know anything about the vessel's papers.

13. The vessel carried lumber and oil; that is all I saw.

14. I don't know who owns the vessel and cargo. The captain said that he and another man owned the vessel and the cargo.

15. Don't know.

16. Don't know.

17. Don't know.

18. Don't know.

19. I have answered this question.

20. Don't know anything about the papers I signed with the balance

of the crew, the articles to go to Hamburg, and from thence to any port of the United States.

21 and 22. Don't know anything about the blockade.

23. The vessel was not stopped on her voyage until brought to by the Arkansas.

24. The schooner had not attempted to enter any port up to
22 the time of capture.

25. Don't know.

26. I have lost my wages by the capture.

27. Don't know whether either vessel or cargo were insured.

28. Don't know.

29. Don't know.

30. and 31. Don't know.

32. All the papers, I believe, were given to the Arkansas.

33. Bulk was not broken on the voyage.

34. No passengers were aboard the vessel.

35. Don't know.

36. We were steering between E. and NE. when we met the Arkansas, and our course was not changed when we met her.

37. Don't know.

38. I heard the Arkansas's officers say there were arms on board, but don't know myself anything about it.

39. The schooner had proceeded as far as Matamoras, and having anchored there for four hours, we learned that the French had possession of the place, so we weighed anchor and steered for New Orleans. All that I have to say is, that I shipped for one place and had to go to another, to which place I would not have gone had I known it previously.

40. Don't know.

41, 42, and 43. Don't know anything about the vessel pre-
23 vious to this voyage

his
PETER ⋈ GUMPS.
mark.

Witness: W. S. BENEDICT.

Sworn to and subscribed before me this 5th October, 1864.

D. AUGUSTIN,
T. B. THORPE,
U. S. Prize Com'rs.

DOCUMENTS AND PAPERS FOUND ON BOARD AND FILED BY PRIZE COMMISSIONERS.

Document A.—Bill of lading.

Shipped, in good order and well conditioned, by B. Snowdon Smith, on board the schooner called the Watchful, whereof Barclay is master, now lying at the port of New York, bound for , to
24 say: ten thousand feet of lumber, forty bbls. petroleum, two hundred and fifty-two , being marked and numbered as in the margin, and are to be delivered in the like good order and condition, at the port of Ham-

10,000 feet of lumber.
40 barrels petroleum, brilliant.

burg, via Matamoras, (the dangers of the seas and fires only excepted,) unto B. Snowdon Smith or to his assigns, he or they paying freight for the said mdse., as per private agreement, with primage and average accustomed.

In witness whereof, the master or purser of the said vessel hath affirmed to three bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated in New York, the 17th day of August, 1864.

(Captain's copy.)

[10-ct. stamp, cancelled.]

Document M.—Manifest.

Manifest of cargo shipped by John Wallace, on board the schooner Watchful, Joseph O. Barclay, master, and bound for Mata-
25 moras, viz:

40,000 feet white pine lumber, consigned to order.

(Brilliant) 40 barrels petroleum, consigned to order.

New York, August 18th, 1864.

J. O. BARCLAY.

Document B.—Clearance.

DISTRICT AND PORT OF NEW YORK.

These are to certify to all whom it may concern, that J. O. Barclay, master or commander of the sch'r Watchful, burthen 200 tons or thereabouts, mounted with guns, navigated with 7 men, American built, bound for Hamburg,* on board merchandise, hath entered and cleared his vessel according to law.

Given under our hands and seals, at the cutom-house of New York, this 18 day of Aug., 1864, and in the 89 year of the independence of the United States of America.

J. A. H.—General clearance.

[SEAL.] C. M. EMLIN, *Collector.*

[SEAL.] C. Y. FRANKLIN, *Naval Officer.*

*In the original, the word "Hamburg" has been written over, and reads "Hamburg" as well as "Matamoras."

26 *Document C.—Oath.*

Oath of allegance and to support the Constitution of the United States.

DISTRICT OF THE CITY OF NEW YORK.

I, J. O. Barclay, do solemnly swear that I will support, protect, and defend the Constitution and government of the United States against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance, and loyalty to the same, any ordinance, resolution, or law of any State convention or legislature to the contrary notwithstanding; and further, that I do this with a full determination, pledge, and purpose, without any mental reservation or evasion

whatsoever; and further, that I will well and faithfully perform all the duties which may be required of me by law. So help me God.

J. O. BARCLAY.

Sworn and subscribed this 18th day of Aug., A. D. 1864.

C. M. EMLIN, *D'y C.*

27 *Document D.—Old articles.*

UNITED STATES OF AMERICA:

We, the undersigned seamen or mariners, who have hereunto subscribed our names, for and in consideration of the monthly or run-wages hereunto set against the same, do hereby, each of us, severally and mutually agree with the master or owners of the ship or vessel called the schooner Watchful, of Huron, whereof Jay Wilbor is at present master, or whoever shall go for master, now bound for the port of Oswego, N. Y., and from thence to any port or ports the master or owners of said vessel may direct on these inland waters, during the term of , or for a single trip or voyage, or otherwise as may be hereafter specified, to perform the said voyage or voyages in the said vessel as become good and faithful seamen or mariners, obeying each and every lawful command of the master and officers o said vessel, and attending with the strictest fidelity and attention to any ship's duty which may be required of us, and likewise conforming in every respect with the laws of the United States which relate to the government of seamen in the merchant service; and it is also expressely understood and agreed by and between the parties
28 hereunto, that they shall severally render themselves on board of said vessel on or before the 11th day of April, 1864, at o'clock in the forenoon, sober and fit for duty.

APRIL 11TH.

Jay Wilbor, master, to Oswego and back to Sandusky.

Jno. T. Pierce, mate, to Oswego and back to Sandusky.

Chas. Wartzwerm, cook, to Oswego and back to Sandusky, $5 more than men.

Chas. Peterson, seaman, to Oswego and back to Sandusky, $1 75 per day.

John Saax, seaman, to Oswego and back to Sandusky, $1 75 per day.

Eli Muck, seaman, to Oswego and back to Sandusky, $1 75 per day.

C. Shirley, seaman, to Oswego and back to Sandusky, $1 50 per day.

Document E.—Private instructions.

PHILADELPHIA, *July 28th*, 1864.

To Captain J.O. Barclay, supercargo of schr. Watchful, of Philadelphia:

DEAR SIR: On arriving at your destination you will please communicate with the shore, and learn if possible whether any news or instructions awaits you; if none, after the lapse of five days, sell most of your lumber, and after waiting twenty-five days longer, act with

the balance of your cargo as your judgment may dictate, even
29 to the proceeding to Hamburg, is necessary; always bearing in mind that no transaction shall be made that will give aid or comfort to the rebels; to avoid which, you may go to the extremity of destroying vessel and cargo.

The Mexican government, through a contract dated July 21st, 1864, (written in English,) with their agents, Messrs. B. Smith and J. de Zubiria, agree to pay forty thousand dollars in specie for your two hundred and fifty boxes mdse. before their delivery, which agreement you must live up to and naught else. They also agree to waive the exportation duty on said specie. Yet if Messrs. Smith or Zubiria, or their authorized agents, give you a thirty thousand dollars in specie free of said exportation duty, and seven hundred and fifty dollars in specie to pay current expenses, I consent to your taking their due bill to my order for the balance of said forty thousand dollars; say nine thousand two hundred and fifty dollars, (payable in specie,) as I have sufficient assurance from parties here, and also from character of my own transactions with them, that they will insure us from the loss of the said $9,250.

30 You will please consider these instructions positive, unless you have my own written statement to the contrary. As the vessel and cargo of lumber and other mdse. belongs to me as sole owner, after your departure from New York as per contract.

After waiting thirty days from vessel's arrival, the contract with the Mexican government of July 21st, 1864, is null and void. And in the event of my absence, you will act on your own judgment, or in accordance with any document in my handwriting and over my signature, you, of course, in the event of said absence, duly representing my interests. But until the expiration of the said thirty days, you are not to deliver said mdse., or any part thereof, different from these instructions and the said contract of July 21, '64.

Wishing you a speedy and successful voyage, I have the honor to be,
Yours, respectfully,

JNO. G. WALLIS.

31 *Document F.—Private instructions.*

Private copy of instructions to Capt. J. O. B.

Do not deliver the first package until you are paid according to agreement, dated and written in English, July 21, '64.

Keep the vessel and cargo from the control of their authorities altogether, if possible, and if they pay and you can keep your vessel from out their authority do so.

In the event of their paying, get clearance to New Orleans or a market, and at first opportunity insure your specie. Ship it to Duncan, Sherman & Co., N. Y., to my order.

Live up to the agreement dated July 21, '64, and written in English.

After the thirty days from arrival expiring, follow any other written agreement or order in my handwriting.

If you conclude to invest in cotton, hides, or wool, ship to Arthur

Leary, N. Y., for my ac. Mem's: the specie you are to be allowed to ship free of exportation duty. N. Y. July 29, '64.

32 *Document G.—Signals.*

We make:

White, half mast, for hope you are all well.
White, once, come to dump.
White, twice, run in until we signal to stop.
White, three times, to Caliph.
White, four times, to Matilda.
White, five times, to John Brown.
White, six times, to point.
White, seven times, play around and expect guide.
White, rapid, for danger, go it according to prior signals.

If no sign of signals, come to dump off bar, or act to the best of your knowledge and judgment.

Red: each dip means a foot.

White and red, I am here.

Captain makes burgee on the main. When he recognizes, he hauls down. If he wishes us to stop signals, he dips twice. If he understands signals, he hoists up and then lowers. If he does not understand, he will not hoist signal. If he wants depth of water on the bar, as *must* go in, he dips 3 times.

33 *Document H.—Old certificate.*

DISTRICT AND PORT OF SANDUSKY, OHIO,
Custom-house, July 2d, 1864.

I hereby certify that the schooner Watchful, of Huron, O., burthen 198$\frac{3}{95}$ tons, owned by John B. Wilbor, is free from all incumbrance, as appears by the records of this office.

[SEAL.] H. P. RADCLIFF, *Deputy Collector.*

Document L.—Mem.

10 M feet prime lumber, at $35,00, (feet marked on each board)	$350 00
Hauling	20 00
	370 00

40 bbls. refined petroleum, m'k'd gauging 1,649 galls., brilliant, 1 gall. per bbl. out, 40, 1,609,90 = $1,448 55.

Aug. 18, 1864.

34 *Document N.—Old certificate.*

Certificate of tonnage duty.

I hereby certify that the tax or tonnage duty imposed by the 15th section of the act of July 14th, 1862, on the schooner Watchful, of

Huron, O., burthen $198\frac{13}{100}$ tons, amounting to nineteen and eighty-onehundredths dollars, has been duly paid for the year ending 31st December, 1861.

Given under my hand and seal of office at the port of Sandusky, O., this 9th day of April, 1864.

[SEAL.] H. P. RADCLIFF, *D'p'y Collector.*

Document K.—Envelope.

T. C. Worthington, esq., collector, Brownsville, Texas.

Document J.—Letter.

PHILAD., *Aug.* 11, '64.

DEAR SIR: Agreeable to your instructions, I have shipped the
35 lumber to your port for warehouse buildings.

I must confess to some anxiety on the subject, as we have reports here to the effect that our troops, consequently your department, are leaving Brownsville; yet I presume you will remain at Pt. Isabel and the Brazos, and will want materials there.

Asking that you will give all proper facility to vessel, as regards unloading or otherwise, as may occur to facilitate despatch.

Yours, respect'y,

B. SNOWDON SMITH.

To C. WORTHINGTON, *Collector, Brownsville, Texas.*

Document P.—Letter.

NUEVA YORK, *Julio* 28 *de* 1863.

S'or G'ral D. Luis Palle, Bagdad:

MI APRECIABLE AMIGO Y G'RAL: El Capitan J. O. Barclay, de la goleta Americano Watchful, va a los puerto, conduciendo los efectos que y save estabamos encargado de compaar aqui creo inutil
36 recomendar a V. que preste a duleo capitan todos los ancilios que necesite en el caso de que tengo que trepesar con algunas difficultades, pues en ello se interesa nuestra independencia y por ella no dudo hara V. todo lo que este de su parte.

Yo salgo el dia 30 de este puerto para ese pero como Buede ser que en Nueva Orleans, no encuentre vapor a tiempo y el capitan llegue primero lucreido combeniente proverlo de esta carta que no dudo le sera muy util mio recuerdos a su aprecible familia y V. mande lo que guste a sue af'mo y ss.

BDO. SMITH.

Translation of Document P.—Filed January 18*th*, 1855.

NEW YORK, *July* 28*th*, 1864.

S'r General D. Luis Palle, Bagdad:

Captain J. O. Barclay, of the American schooner Watchful, leaving for your port, conveying the articles which you know we were ordered to purchase here, I think it useless to recommend to you

to lend all assistance to the said captain he may be in need
37 of, in case he should meet with any difficulties, for in this
our independence is interested, and for it, I have no doubt that you will do all in your power.

I leave this port on the 30th for Bagdad, but as it may happen that I do not find in New Orleans a steamer in time, and that the captain may arrive first, I have thought it proper to provide him with this letter, which I have no doubt will be very useful to him.

My remembrance to your worthy family, and as for yourself, command your affectionate, &c.

BDO. SMITH.

S'r General Don LUIS PALLE,
Captain of the Port of Matamoras, Mexico, Bagdad.

38 *Document S.—Register.*

In pursuance of an act of the Congress of the United States of America entitled "An act concerning the registering and recording, of ships and vessels," John G. Wallis, of Philadelphia, State of Pennsylvania, having taken or subscribed the oath required by said act, and having sworn that he is the only owner of the ship or vessel called the Watchful, of Philadelphia, whereof Joseph O. Barclay is at present master, and is a citizen of the United States, and that the said ship or vessel was built at Clayton, State of New York, in the year 1862, as per register No. 1, issued at the port of Sandusky, May 16th, 1864, now cancelled prop'y, c'tg'd; and said register having certified that the said ship or vessel has one deck and two masts, and that her length is 111 feet, her breadth 22 feet 9 inches, her depth 8 feet 6 inches and that she measures 198 $\frac{1}{95}$ tons; that she is a schooner, has a square stern and a figure-head, and the said John G. Wallis having agreed to the
description and admeasurement above specified, and sufficient
39 security having been given according to the said act, the said schooner has been duly registered at the port of New York.

Given under our hands and seals at the port of New York this 22 day of July, in the year 1864.

[SEAL.] R. SALJE, *Act. Register.*
[SEAL.] E. M. EMLER, *Dep. Collector.*
[SEAL.] C. J. FRANKLIN, *D'y Naval Officer.*

Document O.—Articles.

UNITED STATES OF AMERICA:

It is agreed between the master and seamen or mariners of the schooner Watchful, of Philadelphia, whereof J. O. Barclay is at present master, or whoever shall go for master, now bound from the port of New York to Hamburg, and back to a port of discharge in the United States, that in consideration of the monthly or other wages against each respective seamen or mariner's name hereunder set, they severally shall and will perform the above-mentioned voyage, &c.

40

Names.	Sations.	Birth place.	Age.	Height.	Wages per m.	Advance.	Sureties.
W. C Stolesbury	Mate	Penn	55	5 8	----	----	
Peter Gomp	Cook & stew'd	New York	28	5 6	55	105	67 Catharine st.
Chas. x Smith	Seaman	New York	30	5 7	40	80	29 Cherry st.
Jas. x Nelson	Seaman	New York	27	5 8	40	80	79 Suffolk st.
David Reece	Seaman	Boston	27	5 7	40	80	McKellopp.
Andrew Tinte	Seaman	New York	30	5 7	40	80	McKellopp.
Jno. H. DeWitt	Seaman	New York	24	5 10	40	80	Huelat.
Sam'l Sleeper	Seaman	New York	33	5 9	40	80	Huelat.

[SEAL.] WM. G. CLARK, *Not. Pub.*

Claim of John G. Wallis.—Filed October 24th, 1864.

U. S. district court, eastern dist. of La., in prize.

THE UNITED STATES
vs.
SCH'R WATCHFUL, HER TACKLE, &c., and CARGO. } No. 7914.

To the honorable E. H. Durell, judge of said court:

John G. Wallis, a citizen of the United States and a resident of Philadelphia, State of Pennsylvania, owner of the schooner Watchful, her tackle, and cargo, intervening for his interest in said schooner, her tackle, and cargo, appears before this honorable court
41 and claims said schooner Watchful, her tackle, and cargo, and states that he is the true and bona fide owner thereof, and that no other person is the owner thereof; and therefore, the said claimant, specially denying that said schooner, her tackle, and cargo are a lawful prize, prays that this hon. court will be pleased to decree a restitution of the same to him, and otherwise right and justice to administer in the premises.

JNO. G. WALLIS.

Sworn to and subscribed before me this 24th day of October, 1864.
K. LOEW, *D'y Clerk.*
WHITAKER, FELLOWS & MILLS,
Proctors.

42 *Bond for costs.—Filed October 24th*, 1864.

UNITED STATES OF AMERICA, *Eastern district of Lousiana, ss.—to wit:*

Personally appearing before me, the undersigned, United States commissioner for the eastern district of Louisiana aforesaid, John G. Wallis, as principal, and Jasper Powlis, as surety, do hereby acknowledge themselves jointly and severally to be indebted unto the U. S. district court in the full sum of two hundred and fifty dollars,

lawful money of the United States, to be levied of their goods, chattels, lands, and tenements for the use of said U. S. district court, and for the payment whereof they jointly and severally bind themselves firmly by these presents.

Whereas, in the matter of the United States *vs.* The Schooner Watchful and cargo, No. 7914 of the docket of the district court of the United States for the eastern district of Louisiana, a claim has been filed on behalf of John G. Wallis—

This obligation to be null and void, on condition that
43 the said principal and surety shall abide by the final decree rendered in the cause, and pay all such costs, expenses, and damages as shall be awarded by the court upon the final decree, whether it is rendered in the original or appellate court; otherwise this obligation to remain in full force and virtue.

JNO. G. WALLIS. [L. S.]
JASPER POWLIS. [L. S.]

Signed and sealed at the city of New Orleans this 24th day of Oct'r, 1864, in presence of—

K. LOEW, *Clerk to U. S. com'r in and for the E. D. of La.*

Order, cause fixed for trial.—From minutes of Dec'r 12th, 1864.

UNITED STATES
vs.
SCH'R WATCHFUL and CARGO. } No. 7914.

On motion of Rufus Wafles, U. S. district attorney, it is ordered that this cause be fixed for trial on Friday, 23d December, 1864, at 10 a. m., and that all parties interested be notified hereof.

44 *Order to open sealed papers.—From minutes of Dec'r 16th,* 1864.

UNITED STATES
vs.
SCH'R WATCHFUL and CARGO } No. 7914.

On motion of the district attorney, it is ordered that the sealed papers on file in this case be opened.

Order, cause continued.—From minutes of Dec'r 23d, 1864.

UNITED STATES
vs.
SCH'R WATCHFUL and CARGO. } No. 7914.

On motion of Whitaker, Fellows and Mills, proctors for claimant herein, in the presence of the district atterney, it is ordered that this cause be continued until Wednesday, the 11th day of January, 1865, at 10 a. m.

45 *Order, cause continued.—From minutes of January 11th, 1865.*

UNITED STATES
vs.
SCH'R WATCHFUL and CARGO. } No. 7914.

On motion of J. S. Whitaker, esq., proctor for the claimant, and with the consent of the district attorney, it is ordered that this cause, fixed for this day, be continued to Wednesday, 18th inst., at 10 a. m.

Hearing and continuance.—From minutes of Jan'y 18th, 1865.

UNITED STATES
vs.
SCHOONER WATCHFUL and CARGO. } No. 7914.

This cause came up for trial—dist. attorney for libellant, Whitaker, Fellows and Mills, for claimant—when, after hearing pleadings and evidence, the cause was continued for argument till Wednesday next, 25th inst., at 11 a. m.

46 *Note of evidence.—Filed Jan'y 18th, 1865.*

UNITED STATES
vs
SCH'R WATCHFUL and CARGO. } No. 7914.

The United States offered in evidence the admiralty warrant monition, and marshal's return, the testimony taken in preparatorio, and the papers found on board the vessel, marked A, B, C, D, E, F, G, H, I, K, L, M, N, O, P, Q, and R.

Order and continuance.—From minutes Jan'y 25th, 1865.

UNITED STATES
vs.
SCH'R WATCHFUL and CARGO. } No. 7914.

This cause came up agreeably to adjournment—district attorney for United States, Whitaker, Fellows and Mills for claimant—when, after hearing the argument on behalf of the libellants, the same was continued till to-morrow, 26th inst., at 11 a. m.

47 *Hearing and continuance.—From minutes of Jan'y 26th, 1865.*

UNITED STATES
vs.
SCHR. WATCHFUL and CARGO. } No. 7914.

This cause came up pursuant to adjournment—district attorney for libellants, Whitaker, Fellows and Mills for claimant—when, after hearing argument on behalf of the claimant, the same is again continued till to-morrow, 27th inst., at 11 a. m.

Hearing and submission.—From minutes of Jan'y 27th, '65.

UNITED STATES
vs.
SCHR. WATCHFUL and CARGO. } No. 7914.

This cause came up again, and after hearing the closing argument of the district attorney, the court took time to advise.

48 *Order for a survey.—From minutes of Jan'y 26, '65.*]

UNITED STATES
vs.
SCHR. WATCHEUL and CARGO. } No. 7914.

Ordered, that a survey be held on the schooner Watchful by Richard Swain, marine surveyor, and that he shall, within the least possible delay, report to the court the true condition of said vessel.

Marshal's return.

Received January 27th, 1865, and the same day, month, and year served a copy of the within order on Richard Swain personally.
N. O. Jan'y 27, '65. M. EGAN, *D'y U. S. Marshal.*

Order, cause referred to Rich'd Swain.—From minutes of Jan'y 30, 1865.

UNITED STATES
vs.
SCHR. WATCHFUL and CARGO. } No. 7914.

Ordered, that this cause be referred to Captain Richard
49 Swain, with instructions to follow the course of the Watchful on the log-book, from the time she left New York, and point out on the chart her exact position each day at noon up to the day of her capture, and report the same to the court without delay.

Marshal's return.

Received January 30th, 1865, and on the 31st day of the same month and year, served a copy of the within order on Rich'd Swain, personally.
N. O., Jan'y 31, 1865. M. EGAN,
D'y U. S. Marshal.

Report of survey.—Filed February 6th, 1865.

STATE OF LOUISIANA, *Port of New Orleans:*

I, the undersigned inspector for underwriters of New Orleans, and general marine and river surveyor for the inspection of vessels,
50 steamers, and cargoes, hereby certify that, instructed by the honorable Judge Dureil, I have examined the prize schooner Watchful, as she now lies in the Mississippi river, and find her to be 198 tons, built in Clayton, N. Y., in the year 1862. She has an oak frame, is iron fastened, with a centre-board in her; she is in good order, with the exception of calking. Her decks are open from her having been laid up at the wharf; her bottom is comparatively tight. She does not leak two barrels of water in a week; she is only pumped once a week; might lay where she is for two years without any repairs.

Given under my hand and seal this 3d day of February, 1865.
[SEAL.] RICH'D SWAIN.

Report as to course of vessel.—Filed February 6th, 1865.

To the hon. judge of the United States district court for the eastern district of Louisiana:

51 SIR: Acting under your instructions, I have carefully examined what was given me as the log-book of the schooner Watchful, and taken the courses said to have been steered by that vessel, and find that no such courses could have been made as laid down. For on the second day out, she would have been twenty miles inland in New Jersey; and on the twenty-ninth, five days out, she would have been ninety-two miles inland in the State of North Carolina, (see the chart No. 1;) following the courses made after that, when they made "Abaca," the dead reckoning placed them three degrees east of it, then running down the island of Cuba; when they reached the mouth of the Rio Grande, by their dead reckoning they were over three degrees south of it, and on leaving the Rio Grande for New Orleans, they find themselves up with Ship island before they get within seventy miles of it by their dead reckoning.

I cannot but pronounce the above-mentioned log-book a bogus concern, and void of truth in many respects.

In the first place, the name of the vessel is not put in any part of it, and where she is from is only inserted in the body of the
52 first day's work, and merely says where she is from, and not where she is bound, or who commands her. No log-book can be considered correct without stating at the head of every page where from and where bound; there is not a single day's work made up and entered as it should be.

All of which I respectfully submit to the consideration of the court.

[SEAL.] RICHARD SWAIN,
Marine Surveyor.

Bill for survey.—Filed February 6th, 1865.

THE UNITED STATES
vs.
SCHR. WATCHFUL.

To Rich'd Swain, Dr.:

To examination of vessel, and certificate of same $10 00

Rec'd payment.

Bill for report of course of vessel.—Filed Febr'y 6th, 1865.

THE UNITED STATES
vs.
SCHR. WATCHFUL.

53 To Richard Swain, Dr.:

To examination of charts and log-book, and report on the same $50 00

Rec'd payment.

Decree of condemnation.—From minutes of February 10th, 1865.

UNITED STATES
vs.
SCH'R WATCHFUL and CARGO. } No. 7914.

For the reasons orally assigned by the court, it is ordered, adjudged, and decreed that the schooner Watchful, her tackle, apparel, and cargo be, and the same are hereby, condemned as lawful prize of war; that after ten days' advertisement they be sold by the marshal, and the proceeds deposited as the law directs, and held subject to the further orders of court, reserving for further action the question of how many and what public vessels are entitled to share in the prize, and the relative force of the vessels, and to that end the prize commissioners shall take the requisite evidence.

54 *Rules and grounds for new trial.—Filed February 14th, 1865.*

U. S. district court, east'n dis't of Louisiana.

UNITED STATES
vs.
SCH'R WATCHFUL and CARGO. } No. 7914.

On motion of Whitaker, Fellows and Mills, proctors for Jno. G. Wallis, claimant in this cause, and on representing to the court that the judgment rendered herein condemning said schooner, her tackle, and cargo is erroneous, for, among other reasons—

1st. That said decree of condemnation is contrary to the law and evidence offered in said cause.

2d. That the report of Richard Swain, made under order of court, regarding the condition of said schooner Watchful, so far as the said report would represent that said schooner Watchful was not in a leaking condition at the time she left the mouth of the Rio Grande in September, 1864, and at the time of her capture and arrival in the port of New Orleans, is erroneous; and that by McNeill, W. W. Gallaer, d'y marshal, witnesses residing in the city of New Or-
55 leans, claimant can establish and prove that on the arrival of said schooner Watchful at the port of New Orleans she was in a leaking condition, and to the extent that it became necessary to discharge said cargo in order to save the same, and by J. O. Barclay, of Philadelphia, Pennsylvania, late captain of said schooner, claimant can establish and prove that on the arrival of said schooner Watchful at the mouth of said Rio Grande, in September, 1864, she was in a leaking condition, and which fact, in the opinion of said J. O. Barclay, captain, and of Wm. C. Stokesbury, mate of said schooner, rendered it necessary to seek the first and nearest port of entry to have said schooner repaired; and by the testimony of Wm. Reed Mills, one of the proctors for claimant, claimant can establish that said Stokesbury so informed him previous to his death, which occurred in the city of New Orleans in the latter part of December, 1864, and the testimony of which said Stokesbury was not taken by the prize commissioners, nor produced before them by the captors and libel-

lants, although said Stokesbury was, at the time of taking of said testimony in preparatorio, present in the city of New Orleans, and could easily have been obtained if desired by said captors and libellants.

56 3d. And on further representing to the court that the report of said Richard Swain regarding the log of said schooner Watchful, and the pretended tracing on the chart of the course of said schooner from the port of New York to the mouth of the Rio Grande, and thence to the point at which she was seized, is erroneous; and the said tracing of her course is contrary to her log-book and the evidence offered in this cause; and that said report of said Swain refers to matters and things and contains opinions not called for by the order appointing said Swain in the premises; that a true delineation of the course and distances as shown by said log-book and evidence in the record prove said log not to be "a bogus concern and void of truth," but to be a true and bona fide log, correctly, with the evidence, representing the course and distances of said schooner on her said voyage, a fact which this claimant has had no opportunity of showing to the court since the filing of the said report of Swain, and which fact claimant will be able to show to the court on a re-hearing of this cause.

4th. And on further representing to the court that if the answers of the witnesses whose testimony was taken in preparatorio

57 were not in full answer to each and every question propounded in the standing interrogatories, the omission was not owing to the desire or intent of said witnesses to prevaricate or withhold their answers, but to the neglect of the prize commissioners to properly propound said questions, to seek from them direct and explicit answers to each question, and that if in any answers to said questions there could arise in the mind of the court any doubt as to the full and entire truth of every statement made by said witnesses, claimants, if allowed, will be able to establish, on a re-hearing, the full and entire truth of the statements and answers of said witnesses, and establish the strict integrity of said J. O. Barclay for truth and veracity by Wm. Cummins, John Rice, Thomas Watts and Sons, E. W. Bernards, and other witnesses residing in the city of Philadelphia, Penn., and E. A. Yorke, of the city of New Orleans, and confirm and corroborate the testimony of said J. O. Barclay by the contract entered into by claimant, B'do Smith and J. de Zubiria, on the 21st July, 1864, to be offered in evidence on a re-hearing of this cause.

5th. That if any doubt exists in the mind of this hon. court as regards the instructions given by claimant to said J. O. Barclay,

58 captain, either as regards the caution imposed on said captain to keep the said schooner out of the hands of "their authorities," referring to the Mexican authorities, or on any other point arising in this cause, claimant will, on a re-hearing and trial, be able to remove entirely the same from the mind of the court, and to show that claimant acted throughout his action in the premises in a manner to establish clearly his intention not to violate the blockade established by the government of the United States; and to establish

beyond all doubt the sincere good faith and loyalty of claimant and the said Captain J. O. Barclay, and the mate, Wm. C. Stokesbury—

It is ordered that Rufus Waples, U. S. district attorney, show cause, on Monday, 20th ins't, at 11 o'clock a. m., why a new trial and re-hearing should not be granted in this cause.

John G. Wallis, a citizen of the United States and a resident of the city of Philadelphia, claimant in the above-entitled cause, being first duly sworn, deposes and says that the facts and allega-
59 tions which in the foregoing rule are stated as being capable of proof by claimant on a new trial and re-hearing of this cause are true.

Affiant further states that by imperative business and sickness he was unable to be present in the city of New Orleans at the time the testimony in preparatorio was opened at the trial and hearing of this cause, although he made every effort to be present at the trial, and so informed his proctors; that he desires a new trial and re-hearing, not for the purpose of delay, but simply and exclusively to obtain justice.

JNO. G. WALLIS.

Sworn to and subscribed before me this 14th day of February, A. D. 1865.

W. S. BENEDICT, *D'y Clerk.*

Rules for rehearing.—From minutes of 14*th February*, '65.

UNITED STATES
vs.
SCH'R WATCHFUL and CARGO. } No. 7914.

60 On motion of Whitaker, Fellows and Mills, proctors for Jno. G. Wallis, claimant in this cause, it is ordered that Rufus Waples, esq., U. S. attorney, show cause, on Monday, 20th ins't, at 11 a. m., why a rehearing should not be granted in this case on the grounds filed.

Marshal's return.

Received February 15th, 1865, and on the same day, month, and year served a copy of the within rule and accompanying grounds on Rufus Waples, esq., U. S. district attorney, in person.

February 16th, 1865.

M. EGAN, *D'y U. S. Marshal.*

Affidavit of Jno. G. Wallis.—Filed February 20*th*, 1865.

United States dis't court, eastern district of Louisiana, in prize.

UNITED STATES
vs.
SCHOONER WATCHFUL and CARGO.

Jno. G. Wallis, claimant in the above-entitled cause, first
61 being duly sworn, says that in addition to the persons mentioned in his original rule and affidavit for a new trial and re-

hearing of this cause, he has since discovered that by the testimony of John Brown, of this city, he can establish that the said schooner Watchful, at the time of her arrival in the port of New Orleans, was leaking badly, requiring her to be frequently pumped, and that the pumps of said schooner were out of order, and one of them entirely useless; that said John Brown was the watchman entrusted at the time with watching said schooner; that by said witness affiant can prove that when said vessel arrived at this port loaded she drew five or five and a half feet, and that it often happens that vessels leaking at sea on arrival at this port do not leak, and if they do, not so much, from the fact that the water of the Mississippi river passing in stops the leakage to a great extent by filling up the seams with sand; that by Charles E. Whitney, Captain E. Brookes, and other persons capable of tracing from log-books, and to judge of the same, affiant can corroborate the fact that said log-book is a true and bona fide
62 log; that by G. de Goicouria, of New Orleans, F. de Garay, Mexican consul at the port of New Orleans, and other witnesses, affiant can prove and corroborate the fact that the contract referred to in the record evidence between affiant and agents of the Mexican government was a bona fide contract.

JNO. G. WALLIS.

Sworn to subscribed to before me this 20th February, 1865.

W. S. BENEDICT, *D'y Clerk.*

Report of C. E. Whitney as to course, &c.—Filed February 20th, 1865.

NEW ORLEANS, *February 18th*, 1865.

I have carefully examined the log-book, or what was given me as the log-book, of the schooner Watchful, and have traced the courses said to have been steered by her on a voyage from New York to Matamoras, and find them as follows:

On the 19th of August it is stated in the log that she left
63 New York at 2 o'clock p. m. and proceeded down the bay, and at 7.30 p. m. anchored inside of Sandy Hook. At this time there was a fresh east wind blowing, which, it seems, was against her, for it further states that she lay here four days "wind bound."

On the fifth day, the 23d day of August, at daylight, it says, "she proceeded to sea," but it is not stated what was her course or distance run on that day; but the latitude is given as 40° 6′ north; and to discover what direction and what distance, as well as to find where she was on the end of that day, the 23d of August, I took the bearing and distance of the first point of land sighted, as her log, which was Hatteras light, and worked back, and by so doing, place her some 3½ degrees east of her starting point, "Sandy Hook," and in very near the same latitude given in the log. Finding the log correct in this instance, I commenced from Hatteras to work south, and on the 10th of September, find that she is 46 miles S.SE. of where the log places her, which is Abaco. Looking back to discover the error, I notice that on the 4th of September, she
64 made 40 miles S.SE., and still remained in the same latitude, and I further notice that there was a calm all that day

now, the Gulf Stream running at two knots would bear her to her starting point on that morning, and I therefore leave that day as if she had remained at rest; then working on, I bring her to the exact point given in the log on Sept. 10th, which is Abaco, bearing SW.

After passing "Abaco," the next course given is S.SW. 41, which would bring her entirely out of her course; again, to find the mistake I examined carefully both the books and charts, and find it recorded on the end, Abaco light bore N.NE. 14 miles. I concluded a course was omitted, which gave the whole 41 miles to S.SW., and I then divided the course S.SW., and gave her a west course of 28 miles, which is the usual course run after leaving Abaco, deducting it from the 41 miles.

My conclusions were corroborated by the remarks in the next day's work, which says she passed Stirrup cays at 4 p. m., which is the exact place I make her pass.

Proceeding on her voyage after leaving Stirrup cay, her course is W.SW., which carries her too far to the southward, and I try
65 her on W.NW. instead of W.SW., and she coincides with the remarks in the log, as also with the latitude given within a very few miles.

The course steered the next day is given as S.SW., which it says would bring her 13 miles E.SE. of Orange cay, but running that course would pass it some distance, but by giving her the usual course run there, she comes in the exact depth of water which she anchored in, and the cay bears the right course.

These three errors, small in amount, are the only ones found in her voyage, and her dead reckoning is exceedingly accurate, and fully sustained by the observations set forth in the annexed charts.

Yours, respectfully,

CHARLES E. WHITNEY.

Annexed to report:

Aug. 23d, got under way, no course or distance.
Aug. 24, S. b E., 45; W. b N., 48.
Aug. 25, W., 20; S. b E., 45.
Aug. 26, W. b N., 15; S.SE., 30; S.SW., 6; SW., 15.
66 Aug. 27, SW. ½ S., 20; W. S. N., 12; S.SE., 42.
Aug. 28, SW. ½ S., 20; S.SE., 15; SW. b W., 38.
Aug. 29, W. b N., 12; W.NW., 10.
Aug. 30, W.SW., 44; W., 22; S.SW., 12.
Aug. 31, at 10 p. m., Hatteras in sight; S.SW., 44; S., 16; S.SE.,
68.
Sept. 1st, S.SE., 36; S. 68.
Sept. 2d, S. 76; S. b W., 37; S.SW, 21.
Sept. 3d, S. b W., 31; S. 15; S.SW., 30.
Sept. 4th, S.SE., 40.
Sept. 5th, SW., 12; W.SW., 20; S.SE., 24.
Sept. 6th, SE., 21; W.SW., 28; S., 18.
Sept. 7, S.SE., 14.
Sept. 8, S.SW, 28; SW. b S., 26; SW., 10; SW. 6 S., 3,5.

Sept. 9, SW. b S., 62.
Sept. 10, S.SW., 23; SW. 6 S., 6; S.SW., 3; S., 9. Abaco light-house, N.NE., 14 miles; S.SW., 41.
Sept. 11, W. b N., 24; W.SW., 37; S.SW., 53.
Sept. 12, S.SW., 20; S. b W., 8.
67 Sept. 13, S., 22; S.SW., 18.
Sept. 14, S.SW., 35; SW., 12; SW. b W., 7; W. b S., 8.
Sept. 15, W. ½ S., 141; SW., 20.
Sept. 16, W.SW., 18; W. b S., 98.
Sept. 17, W. ½ S., 75; W. b S., 10.
Sept. 18, W. b S., 17; W., 4.
Sept. 19, W., 6; W. b N., 7; W., 27; W.SW., 46; W. b S., 18.
Sept. 20, W., 107.
Sept. 21, W., 42; W. b N., 20; W. b S., 56.
Sept. 22, W., 89.
Sept. 23, W. ½ S., 94; W., 22; W. b N., 37.
Sept. 24, arrived, W.SW., 14; NE. b E. ½ E., 78.
Sept. 25, NE. b E. ½ E., 2; NE. b E., 6; NE. b N., 11; NE. ½ N., 14; N.NE., 18; NE. 6 N., 19; NE. 6 E., 15; E.NE., 6.
Sept. 26, E.NE., 15; NE. b E., 12,5; E.NE., 60; E. b N. ½ N., 18.
Sept. 27, E. ½ N., 7.

Log ends 2 o'clock a. m.; was captured 17 hours after.

68 Sept. 10th at 10.30 p. m., made light on Abaco, bearing SW.

Sept. 24th, in the Gulf the weather was stormy, and the wind was south, thus increasing the current.

Sept. 26, made 117 miles on her course to Ship Island shoals.

Sept. 27, log, as to course and knots, ends at 2 a. m., at last point on chart, and at 1 p. m. made S. I. Shoal light, bearing NE., say 65 miles; the wind was favorable, so was the current; thus from 2 a. m. until 7 p. m. is 17 hours; left her to run from the last point on chart to her captured spot, 92 miles.

Hearing, rule, and submission.—From minutes of Feb'y 20, '65.

UNITED STATES.
vs.
SCH'R WATCHFUL and CARGO, } No. 7914.

The rule for a rehearing taken by the claimant came up, Whittaker, Fellows and Mills for pl'ff, in rule; district attorney for defendants, in rule; and after hearing argument, the court took time to advise.

69 *Statement of Lieut. Kellogg, U. S. N.—Filed March 1st,* 1865.

U. S. S. ONEIDA,
Off New Orleans, Feb'ry 27th, 1865.

SIR: In obedience to orders, I have carefully followed the course said to have been sailed by the schooner Watchful, and marked in the log of that vessel, and I respectfully submit the following, report, viz:

As there are no courses marked for the first nine hours after the Watchful is supposed to have left Sandy Hook, I was obliged to take

my departure from Cape Hatteras, and work back. At noon of the 23d of August, the first day that the schooner's latitude is logged, I find my position in lat. 40° 09′ N., and the log gives 40° 06′ N., a difference of only three miles of latitude. My longitude places me about three degrees to the e'd of Sandy Hook, but as the vessel had been nine hours only at sea, according to the log, the long. could not have been correct, or else the time of going to sea was wrong.

70 Starting again from Hatteras, and working south, I find my position a little to the n'd and e'd of Hole in the Wall light, which difference can be easily accounted for by the current, as there had been a "strong northerly current for the last three days."

At 11 a. m. on the 10th Sept., "light on Abaco bore NE. by E., distant 14 miles," which places the vessel in lat. 25° 40′ N., but at noon of the same day the lat. was 25° 00′ by observation. This is a difference of 40 miles in one hour, which, of course, is incorrect.

I took my departure again from the SE. edge of Salt Cay bank, and found my position 40 miles to the n'd of the mouth of the Rio Grande, and about 10 miles inland. Following the courses logged, my position found was in the same latitude and about one degree to the w'd of the place of capture.

I do not doubt the correctness of the courses given in the log-book, for in a long run, where there is so much doubt concerning the strength and deviation of the current, 40 or 60 miles is not a great difference. It is impossible always to tell the direction of the current, as it is often influenced in a great measure by the

71 wind, and may be exactly opposite one day from that of the preceding day.

With the exception of the error mentioned in the log at noon of the 10th of Sept., and the difference of long. to the e'd of Sandy Hook, I believe the courses in the log-book to be generally correct.

Very respectfully,

E. N. KELLOGG, *Lieut. U. S. N.*

To Fleet Captain S. R. FRANKLIN, W. G. B. sq'dr'n.

Respectfully referred to Judge Durell.

S. R. FRANKLIN, *Fleet Capt.*

Naval Headquarters, N. O., Feb. 27, 1865.

72 *Order for rehearing and further proof.—From minutes of March 1st, '65.*

UNITED STATES
vs.
SCH'R WATCHFUL and CARGO. } No. 7914.

For the reasons orally assigned by the court, it is ordered that the rule taken by the claimant on fourteenth ult'o be made absolute; that the judgment rendered on February 18th, 1865, be set aside, and the cause reopened, with leave to the said claimant to furnish further proof in this case.

Testimony for claimant.—Filed March 7th, 1865.

UNITED STATES
vs.
SCH'R WATCHFUL and CARGO. } No. 7914.

Testimony on behalf of complainant under the order for further proof.

Libellants reserve all legal exceptions to the testimony.

73 G. de Goicuria, being duly sworn for the claimant, says:

I am acquainted with J. G. Wallis, Bernardo Smith, and J. de Zubiria; Bernardo Smith and J. de Zubiria were officers of the Mexican government; Smith was a colonel, the other a major commanding; I mean officers of the republic of Mexico; these two officers did come to the United States for the object of procuring arms for the Mexican republic. I know that they made a contract to that effect with Mr. Wallis, the claimant; this was last year, about June or July. These arms were to be sent to a port in the Mexican republic, not occupied by French troops. I know of Mr. Wallis starting in the month of September last from the United States to go to Mexico; I was with him on board the U. S. transport Josephine; we did not reach the mouth of the Rio Grande, because on our arrival at the Brazos, the French troops were already there; there was a French blockading squadron there. We left N. O. in the month of Sept. last, and reached Brazos some 2 or 4 days after we left New Orleans.

74 Mr. Wallis's object in going there was to have some explanation with the Mexican government for the delivery of the arms; don't recollect the name of the vessel exactly that had the arms on board; should I hear the name, I would recollect her. The witness being shown the names of five vessels, says it was the Watchful. When we left New Orleans, there was a rumor that the French squadron was already off the ports of Mexico; but there was nothing certain about it. Have seen the signature of Bernardo Smith sometimes. Being shown Doc't A, says: to the best of my knowledge and belief, it has the signature of said Bernardo Smith. I am also acquainted with the signature of Zubiria, and believe his signature to Doc't A to be genuine. Mr. Wallis remained some 15 days off the Brazos; I left toward Matamoras before he did; I have a commercial house in Matamoras.

Cross-examined:

I was not on board the Watchful when captured; I never was on board of her; I am a resident merchant of Matamoras. I saw contract

75 A on my passage with Mr. Wallis from New Orleans to Matamoras, on the Jesephina; read it, and it is the contract about which I testified in the beginning of my evidence; have seen Mr. Smith write several times; was well acquainted with him; I have seen his written authority from the Mexican government before he left for the United States; I know from the statement of Zubiria and Bernardo Smith that they had succeeded in making the contract with Mr. Wallis. I knew first from these two gentlemen the object of Mr.

Wallis in going to Matamoras, and they put me in connexion with Mr. Wallis to go with him; I have no interest whatever in these arms. I know from general report and from being a friend of his, that Smith was a colonel; I have seen the written authority from the Mexican government to Smith and Zubiria for this contract.

Re-examined:

The last I heard of Col. Smith was that he was in South Mexico; have not seen him in New Orleans since I have returned here. The federal troops, at the time I arrived there, occupied the left bank of the Rio Grande from Brazos along the coast; the French
76 were on the other side. The French had a considerable fleet there.

G. DE GOICOURIA.

All legal exceptions to the testimony.

Sworn to and subscribed before me this 7th March, 1865.

D. AUGUSTIN, *U. S. Prize Com'r.*

Being further examined, says:

The Union troops evacuated Brownsville some time in July or August, 1864; they fell back, but held the line from Boca del Rio to the mouth of the Brazos.

The claimant offers contract A.

E. N. Kellogg, sworn for claimant, says:

I have seen the report signed by Mr. Whitney, and have made my report in this case; the difference between my report and that of Mr. Whitney, which I have examined, is not greater than would ordinarily occur by the examination of the log, and tracing on the chart by two different persons, who would separately examine the log and trace the course.

Cross-examined:

77 I am attached to the U. S. sloop Oneida; have been in the naval service 6½ years; I have held the position of midshipman, ensign, and am now lieutenant; report marked B is the report I allude to as that of Whitney; report C is my report, which is correct. I had no assistance in making my report.

Re-examined:

I made this report under the order of Captain Franklin, the fleet captain of the squadron, who was requested by Judge Durell to that effect.

E. N. KELLOGG, *Lieut. U. S. Navy.*

Sworn to and subsribed before me this 7th March, 1865.

D. AUGUSTIN, *U. S. Prize Com'r.*

Document A.

This agreement made and concluded this 21st day of July, 1864, between John G. Wallis, of the city of Philadelphia, in the

78 State of Pennsylvania, merchant, of the first part, and Bernardo Smith and Justiniano de Zubiria, accredited agents of his excellency Benito Juarez, president of the federal government of Mexico, of the second part—

Witnesseth: that the said John G. Wallis agrees to sell to the Mexican federal government, through said agents of the second part, five thousand guns, styled "Austrian Garibaldi rifles," 69 calibre, with sword bayonets, (spring handles,) at sixteen dollars each, one half of said price (say forty thousand dollars) to be paid here in U. S. currency, by the parties of the said second part, on the delivery of the said guns to the vessel, the balance, say forty thousand dollars, to be paid in specie, free of exportation duty, to the said John G. Wallis, or to his authorized agent or agents, at or convenient to Brownsville, Texas, or Matamoras, Mexico, and before the delivery of the guns from the vessel said payment shall be made; said character of payment being in consideration of sundry expenditures and risks the said John G. Wallis assumes before said final payment. On receipt by John G. Wallis of the first half of the purchase-money he agrees to
79 have said guns transferred to ownership of one or both of the said parties of the second part, and the party or parties of the second part do individually or jointly solemnly agree that they consider said transfer as merely provisionary for shipment, and that the said transfer shall be null and void after the departure of the vessel from the United States, and that then the party of the first part has sole control and ownership of said guns, immediately after said departure of the vessel, until he is paid the balance or second half of the purchase-money, as heretofore stated; and further, (as is customary in commercial operations,) we of the second part agree, and each of us, that our government forfeits all right and title or claim on the said John G. Wallis or his guns, in the event of the heretofore stated last half of purchase-money (say forty thousand dollars) not being paid to him or his authorized agent or agents within thirty days of the vessel's arrival at Point Isabel or Rio Grande river.

The parties of the second part hereby agree to pay the sum of five thousand dollars to said party of the first part here in U. S.
80 currency as freight on the guns, in consideration of the party of the first part assuming all risks to his vessel of seizure and damages of the sea. As regards the expenses of navigation and preparing the vessel for sea, and all expenses in getting the guns cleared, (which will be receipted for in a paper accompanying this document, and which we think it not prudent to specify here,) we agree that each party shall pay its one-half of the entire cost and expenses other than the herein-stated five thousand dollars.

The parties of the second part further promise and agree that they have and will obtain the sanction and indorsement of this contract by his excellency M. Romero, their government's minister plenipotentiary to the United States.

In witness whereof, the said parties have interchangeably se

our hands and seals to these presents, the day, month, and year aforesaid.

JNO. G. WALLIS. [L. S.]
B'DO SMITH. [L. S.]
J. DE ZUBIRIA. [L. S.]

Testigo: J. O. BARCLAY.

81 STATE OF LOUISIANA, *City of New Orleans:*

I, Alphonse Barnett, a notary public in and for the city of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, do hereby certify that this day before me personally came and appeared Messieurs John G. Wallis and Bernardo Smith, the same whose names are subscribed to the instrument of writing on the reverse hereof, who having been by me, notary, duly sworn to declare the truth, deposed that they signed, sealed, and delivered the same for the uses and purposes therein set forth and specified on the date therein mentioned.

New Orleans, 21st October, 1864.

JNO. G. WALLIS.
BERNARDO SMITH.
[SEAL.] A. BARNETT, *Not. Pub.*

82 *Testimony for claimant.—Filed March 8th*, 1865.

U. S. district court east'n district of Louisiana.

UNITED STATES *vs.* SCH'R WATCHFUL. } No. 7914.

Testimony taken before me, P. B. Thorpe, U. S. prize com'r, on order for further proof on behalf of claimants, in presence of dist. att'y and W. R. Mills, esq. Dist. att'y reserves all legal exceptions:

Wm. W. Gallaer, being duly sworn, deposes and says that he is chief deputy U. S. marshal. I took possession of the sch'r Watchful; can tell the exact date by looking at my papers; I am not sure that the pumps were out of order when I received her, but they were out of order within 24 hours after I received her, from constant working: it was, in my opinion, necessary to unload a portion of her cargo; I considered it very necessary to unload to keep the cargo from being damaged; my impression is that I called in other keepers, the special keeper of the Watchful being worn out by constant work at the pumps; my experience is that a vessel that would leak in
83 fresh or salt water would, when in the Mississippi river, have her seams filled up with mud in a few days, so that the same vessel would not leak a drop. The sch'r Josephine came here so that she could hardly be kept afloat with two pumps going; in 10 days after lying at the levee her leaks closed up entirely; this is my experience as keeper of prize vessels; I ascribe this effect to the muddy

water getting into the seams; I never receive a prize that does not leak more or less, which, after remaining at the levee a short time, have their leaks cease; this has always been the case, except in one vessel that had a hole in her hull.

Cross-examined:

I know what the cargo consisted of; I removed two hundred and fifty cases of muskets; I knew them to be military weapons; previous to the removal of these cases I removed a pile of lumber that was piled upon them, the cases.

Re-direct:

I think there was no lumber under the cases; there was some coal oil which I did not think it necessary to remove, as it not be injured by water.

Cross-examined:

I know nothing about the condition of the vessel previous
84 to her capture.

Mr. Gallaer, being recalled, identified document marked by prize commissioners' initials, and numbered "one," as the report he referred to in his testimony.

Direct examination:

The witness states that from the appearance of the Watchful, he inferred that she leaked before he took charge of her.

W. W. GALLAER, *Dep'y U. S. Marshal.*

Sworn to and signed before me this 8th day of March, 1865. New Orleans, La.

T. B. THORPE, *U. S. P. C.*

John Brown, being duly sworn, deposes and says that he is a citizen of New Orleans. I have been a watchman on prize schooners in the U. S. marshal's office for the last 18 months; I was watchman on the Watchful for four months, dating from the time she arrived here; it was necessary on her arrival here to resort to the pumps; I had to pump the vessel every two hours; the pumps were in bad order; the forward pump gave right out the moment I used it; it became necessary to remove the cargo, as the pumps would not work; the
85 vessel that will leak at sea in clear water will have her seams tighten up in Mississippi water.

Cross-examination:

I know nothing about the condition of this vessel previous to her capture.

Direct examination:

I know nothing about her condition while at sea; cannot say how she was at sea; I cannot tell that she leaked at sea, as I was not on board of her.

Question. Judging from the appearance of the vessel when you took possession of her, do you think she leaked at sea?

Answer. I cannot tell. I cannot tell because I was not on board of her.

JOHN BROWN.

Sworn to and subscribed before me this 8th day of March, 1865.

T. B. THORPE,
U. S. Prize Com'r.

Charles E. Whitney, being duly sworn, deposes and says, that the document marked "B," and identified by prize com'rs' initials, is his report and made by him. I state that the examination of
86 the log, and the projections on the chart made by me, are correct according to the log.

CHA'S E. WHITNEY.

Sworn to and subscribed before me this 8th day of March, 1865.

T. B. THORPE,
U. S. Prize Com'r.

Capt. Enoch Brooks, being duly sworn, deposes and says, that he is a citizen of Philadelphia; that he has been a shipmaster for the last thirty-five years, mostly in the West India trade; has commanded a Liverpool packet. Have run on the Atlantic coast. During the Mexican war I commanded a transport between New Orleans and Vera Cruz. I have examined the report filed in this case by Charles E. Whitney, and the projections on the chart made by said Whitney. I partially examined the log-book of the Watchful, and the working from Cape Hatteras back agreed with Mr. Whitney within a few miles. I read over Mr. Whitney's report, and pronounce it as correct as can well be made.

Cross-examined:

The logs of vessels usually report the condition of the vessel; it is usually put down under the head of remarks. As a general
87 rule, if a vessel is making a great deal of water it is mentioned in the log; this is the general rule, but sometimes these things are neglected. The log is a history of the voyage of a vessel from the commencement to the end of the voyage; this is the intention of the log, and it is kept by the mate.

Re-direct:

In small vessels mates are apt to be careless, unless strictly attended to by the master. The law relating to the log is the same regarding large and small vessels, but, generally, in small vessels the log is not so strictly kept.

Re-cross examined:

It is usual to enter in the log the time the vessel bears up for a port for repairs. The reason for bearing up for repairs should be reported in the log.

ENOCH BROOKS.

Sworn to and subscribed before me this 8th day of March, 1865.

T. B. THORPE,
U. S. Prize Com'r.

Document "one."—Annexed.

88 U. S. PRIZE COMMISSIONERS' OFFICE,
New Orleans, October 11th, 1864.

C. Bullitt, esq., U. S. marshal, New Orleans, La.:

Believing it is for the advantage of all parties concerned to have the schooner Watchful unloaded, the vessel being in a most unfortunate condition, as appears from official survey attached, you will please remove the cargo, using your judgment as to the best manner of storing and preserving the same.

Yours, respectfully,

T. B. THORPE, *U. S. P. C.*

Annexed:

NEW ORLEANS, *Oct'r 11th*, 1864.

T. B. Thorpe, esq., prize com'r:

Acting under your instructions, I have made a careful survey of the prize schooner Watchful, and find that she is making water freely, and both pumps in bad order. I think it absolutely necessary to discharge the cargo and put it in store for safe-keeping.

Yours, respectfully,

RICH'D SWAIN, *U. S. Appraiser.*

89 Attached:

The marshal of the United States will, in compliance with the decision of the prize commissioners' surveyor, cause the cargo, &c., of the schooner Watchful to be immediately discharged.

New Orleans, 11th October, 1864.

D. AUGUSTIN, *U. S. Prize Com'r.*

Testimony of E. A. Yorke, &c.—Filed March 14th, 1865.

U. S. district court, east'n dis't of La.

UNITED STATES
vs.
SCH'R WATCHFUL and CARGO. } No. 7914.

Testimony taken before me, United States prize commissioner, on order for further proof in behalf of claimants, in presence of U. S. district attorney and W. R. Mills, esq.

Edward A. Yorke, being sworn, deposes and says, that he
90 is a commission merchant at No. 83 Poydras st., New Orleans, and that he knows J. O. Barclay, and that he saw him about the 8th of October last, in New Orleans, and on that day he went to the levee, saw him engage his passage on the steamer Creole for New York, and pay for the same; I have not seen Captain Barclay since that time. (Objected to by libellant as hearsay and irrelevant.) I have received a letter since the 8th of October from Captain Barclay; I received it through the mail about *about* the last of October, 1864. Proctors for claimants asked witness, Capt. Yorke, whether

Capt. Barclay, when in New Orleans, said anything to him regarding the condition of the sch'r Watchful at the time the schooner left the Brazos in September last. (This question was objected to by libellants, and objection sustained.) I was a ship master fourteen years; the rule is that where a vessel has to bear up for repairs, if insured, for the captain to call a consultation of the officers; the decision of this consultation is entered in the log. This is necessary to obtain the insurance; but where the vessel and cargo are not insured, it is not necessary to call a consultation; this is my own individual
91 opinion. I never heard of any different course of action. I knew Wm. C. Stokesbury: he is not alive; I saw his dead body in Jan'y, 1865. The letter alluded to by witness is attached, identified by prize commissioners' initials, and marked A. Contents is not admitted. (Counsel for libellant object to said letter as irrelevant.) Letter marked B, and identified by prize commissioner's initials, which witness states was enclosed to him in letter identified as A, is objected to by libellants, and objection sustained.

EDW'D A. YORKE.

Sworn to and subscribed before me this 14th day of March, 1865.

T. B. THORPE,
U. S. Prize Com'r.

Letter A.—Annexed.

PHIL'A, *Oct.* 17*th*, 1864.

Capt. E. A. Yorke, New Orleans:

D'R SIR: On my arrival here I was surprised to hear of Mr.
92 Wallis's absence, and that he was supposed to be at Brazos or Matamoras. I, therefore, took the money to meet my draft on him, which will be paid when presented. I enclose you a copy of my letter to Mr. Wallis, and I think you had better communicate with him. You can learn his whereabouts by applying to Messrs. Magee & Kneass, N. O. Please let me know if it is absolutely necessary for me to return to New Orleans.

Yours, very truly,

J. O. BARCLAY.

Letter B.—Attached.

PHIL'A, *Oct.* 17*th*, 1864.

DEAR SIR: On my arrival here this morning I called at your place of business, and finding you absent from the city, take the earliest opportunity of sending a letter to your address at New Orleans. I have also written to your friends requesting them to forward the letter to you.

On arriving at the port of Bagdad, and finding it in the pos-
93 session of the French, I made the signal agreed upon, and getting no reply, I left as soon as it was dark, although the French authority sent a peremptory demand to come on shore with all my papers; fearing they might have heard of us and our er-

rand, I took French leave as soon as possible. The vessel was leaking very badly, the pumps out of order, and the men refusing to go any further than N. O., I was obliged to bear up for that port, and when within sixty miles of it, we were boarded by an American cruiser, who put a prize crew on board and sent her to N. O. The case will be brought before court in about two months; should it come before, I have authorized Mr. Yorke to have it deferred until you were heard from. I drew upon you for $150 for my expenses, and as you were not here, paid the draft myself. I shall remain here until I hear from you. As you are aware, I have not the means of carrying on the suit. I felt very much annoyed on your account, as it no doubt will be necessary for me to be in N. O. when the case is brought on. At the same time there is no doubt in my own mind that
94 it can easily be settled in your favor. Let me hear from you as quickly as possible.

Yours, very truly,

J. O. BARCLAY.

I think you had better communicate with Capt. E. A. Yorke, agent for Bernadoes, and most of our Phil'a houses, as soon as possible, as he is conversant with the case, and holds my power of attorney to act.

Hearing and submission.—From minutes of March 21st, 1865.

UNITED STATES
vs.
SCH'R WATCHFUL and CARGO. } No. 7914.

This cause was taken up by consent of counsel—district attorney for libellants; Whitaker, Fellows, and Mills, for claimant; and after hearing pleadings, evidence, and argument, the court took time to advise.

95 *Note of evidence.—Filed March 21st, 1865.*

UNITED STATES
vs.
SCH'R WATCHFUL, &c. } No. 7914.—Note of evidence on new trial.

Claimant offered in evidence the testimony filed March 14th, 1865, and the letter from Captain Barclay to Wallis thereto annexed. Also testimony filed March 7th, 1865; also testimony filed March 8th, 1865; document marked "one" by prize com'rs. Also Whitney's report and doc't A.

The evidence taken on former trial is considered in evidence at the present trial.

Judgment of restitution.—Rendered March 24th, 1865.

UNITED STATES
vs.
SCH'R WATCHFUL, HER TACKLE, &c., and CARGO. } No. 7914.

96 For the reasons orally assigned by the court, it is ordered

adjudged, and decreed, that the libel be dismissed, and that the vessel and cargo be restored to the claimant upon the payment of all costs and charges, reasonable cause of seizure being assigned in the premises.

Judgment rendered March 24th, 1865.

Judgment signed March 30th, 1865.

E. H. DURELL, *Judge.*

Petition of appeal.—Filed March 28th, 1865.

UNITED STATES
vs.
THE SCHOONER WATCHFUL, HER TACKLE, &c., and cargo. } No. 7914.

To the honorable Edward H. Durell, judge of the district court of the United States for the eastern district of Louisiana:

The petition of Rufus Waples, United States attorney, in the
97 name and in the behalf of the United States of America, libellants herein, respectfully represents, that a final sentence and decree were entered on the day of March, 1865, in the above-entitled cause, in the said U. S. district court for the eastern district of Louisiana, in and by which said final sentence and decree it was ordered, adjudged, and decreed that the ; that said final sentence and decree is adverse to said libellant, and to his manifest injury and prejudice; that the matter in controversy exceeds in value the sum of two thousand dollars; That your petitioner in behalf as aforesaid feels aggrieved by the rendition of said final sentence and decree, and is advised that the same is erroneous, and ought to be reversed.

Wherefore said libellants, in behalf as aforesaid, doth hereby appeal from said final sentence and decree to the next term of the Supreme Court of the United States, returnable on the first Monday of December next, and prays that this hon. court may grant him
98 a suspensive appeal from said final sentence and decree, the same to operate as a supersedeas; and that the said final sentence and decree may be reversed, and such other decree thereupon made as to the said Supreme Court shall seem just; and that a transcript of the record and proceedings in this cause, duly authenticated, may be sent up to the Supreme Court of the United States without delay.

RUFUS WAPLES, *U. S. Att'y.*

Order.

An appeal is allowed in this case as prayed for, the same to operate as a supersedeas, returnable in the Supreme Court of the United States, the first Monday of December next, the appellants being by law dispensed from giving bond and security in judicial proceedings.

April 1st, 1865.

E. H. DURELL, *Judge.*

99 *Citation of appeal.*

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
SCH'R WATCHFUL and CARGO. } No. 7914.

The United States of America to Jno. G. Wallis, claimant, greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at its next term, to be holden in the city of Washington, D. C., on the first Monday of December, 1865, to answer the appeal taken by the United States, libellants in this cause, and that you show cause then and there, if any there be, why the judgment rendered against the said libellants should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable E. H. Durell, judge, this first day of April, in the year of our Lord 1865, and the 89th of the American independence.

E. H. DURELL, *Judge.*

100 Indorsed: Citation of appeal.—United States district court, No. 7914.—United States *vs.* Sch'r Watchful and cargo.

Serve on claimant, Jno. S. Wallis. Rec'd April 1st, 1865, and on the 3d day of the same month and year, served a copy of the within citation on Jno. S. Wallis, claimant herein, by leaving it in the hands of Rob't Mills, esq., one of the firm of Fellows & Mills, esqrs., proctors for claimants, who accepted service for said claimant.

April 3d, 1865.

M. EGAN, *D'y U. S. Marshal.*

Filed April 4th, 1865.

K. LOEW, *D'y Cl'k.*

101 *Motion to bond, and submission.—From minutes of April 4th, 1865.*

UNITED STATES
vs.
SCH'R WATCHFUL and CARGO. } No. 7914.

The proctors for the claimant this day made the following motion, viz:

On motion of Whitaker, Fellows & Mills, proctors for John G. Wallis, claimant in above numbered and entitled cause, and on representing to the court that a decree of restitution has been rendered in this cause in favor of said claimant, and from which decree the United States, libellants, have taken an appeal to the Supreme Court of the U. S. at its next term; and on further representing to the court that claimant is anxious to have said schooner Watchful, her tackle, apparel, and her cargo, excepting the 250 packages and cases of firearms and equipments, surrendered to him on furnishing bond according to law—

It is ordered that said schooner Watchful, her tackle, apparel, and her cargo, excepting said 252 cases of fire-arms and equipments, be surrendered by the marshal to the said J. G. Wallis, claimant,
102 on his furnishing bond, with good security, according to law.

And it is further ordered that R. Waples, U. S. district attorney, and T. B. Thorpe, esq., U. S. prize commissioner, be heard as to appointment of appraisers of said vessel and cargo so sought to be returned on bond.

And after hearing the district attorney, the court took the motion under advisement.

Order refusing motion.—From minutes of Ap'l 5, '68.

UNITED STATES
vs.
SCH'R WATCHFUL and CARGO. } No. 7914.

Considering that the claimant asks to bond only a portion of the cargo, ordered, that his motion of yesterday be denied, with costs.

103 *Motion and order to bond, &c.—From minutes of April 8th, '65.*

UNITED STATES
vs.
SCH'R WATCHFUL and CARGO. } No. 7914.

On motion of Whitaker, Fellows and Mills, proctors for John G. Wallis, claimant, in the presence of the dist. att'y, and on suggesting to the court, that a decree of restitution has been rendered in this case, from which decree, the U. S., libellants, have taken an appeal to the Supreme Court of the United States, and on further suggesting to the court that the said claimant is desirous of bonding the vessel, and the whole of the cargo—

Ordered, that John Fahy and Captain Richard Swain be appointed appraisers to ascertain the value of the vessels and cargo, and that the same be delivered to the said claimant, upon his furnishing a bond, in sum exceeding by one-fourth the appraised value of the same, with good and solvent security, conditioned as the law directs, and upon his paying all costs and charges herein.

104 *Notice to appraisers, issued April 8th, 1865.*

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
SCH'R WATCHFUL and CARGO. } No. 7914.

To Rich'd Swain and John Fahey, esq's:

Take notice that you have been this day appointed appraiser, for the purpose of ascertaining the value of the property libelled in this case, and you are to file the report of your appraisement within the shortest possible delay. By order of court.

[SEAL.] W. S. BENEDICT, *D'y Clerk.*

N. O., April 8th, 1865.

Marshal's return.

Received April 10th, 1865, and on the same day, month, and year served a copy of the within notice on John Fahey and Richard Swain, each personally.

April 10th, 1865. W. EGAN, *D'y U. S. Marshal.*

105 *Oath of appraisers.—Filed April 11th,* 1865.

I, Richard Swain, having been appointed by the hon. the district court of the United States for the eastern district of Louisiana an appraiser to value the schooner Watchful, her tackle, apparel, and cargo, do solemnly swear that I will perform and discharge the duties according to the best of my abilities and understanding.

RICH'D SWAIN.

Sworn to and subscribed before me this 10th April, 1865.

W. S. BENEDICT, *D'y Clerk.*

I, John Fahey, having been appointed by the hon. the dist. court of the U. S. east'n dist. of La. an appraiser to value the schooner Watchful, her tackle, apparel, and cargo, do solemnly swear that I will perform and discharge the duties according to the best of my abilities and understanding.

JOHN FAHEY.

Sworn to and subscribed before me this 10th day of April, 1865.

W. S. BENEDICT, *D'y Clerk.*

106 *Report of appraisers.—Filed April 11th,* 1865.

UNITED STATES
vs.
SCH'R WATCHFUL and CARGO. } No. 7914.

To the Hon. E. H. Durell, judge of the district court of the United States for the eastern district of Louisina:

The undersigned, having been appointed and duly sworn as appraisers in the above-entitled cause, have the honor to report, that we have been on board of the schooner Watchful, for the purpose of ascertaining her value; and on a careful examination, we find that she is $198\frac{45}{100}$ tons register, and was built at Clayton, New York, in the year 1862. She has a single deck, with a half-poop cabin, an oak frame, beams and bindings—a single bottom, iron-fastened, with a centre-board in her; is well built and well fastened. We have also examined her tackle and apparel, as per inventory at the marshal's office, and we do hereby value and appraise the said schooner, her tackle, &c., at the sum of eleven thousand five hundred dol-
107 lars cash, and no more $11,500 00

We have also held survey on the cargo, which we value at the following sums, viz:

12 000 feet of white pine lumber, a $50 per M.....	600 00
40 bbls. petroleum oil, 36 gall's ea.....	1,440 00
250 cases of muskets, 20 in each case, a 3 ea.	15,000 00
Total.....	28,540 00

Given under our hands this 11th day of April, 1865.

RICH'D SWAIN.
JOHN FAHEY.

Appraiser's bill. | *Filed April 11th*, 1865.

UNITED STATES
vs.
SCH'R WATCHFUL and CARGO. } No. 7914.

To Rich'd Swain and John Fahey, appraisers, Dr.:

Vessel, &c., at $11,500—

Commission on same, a 1 per cent.....	$115 00
Cargo, valued at 17,040—	
Commission on same, a 1 per cent	170 40
Labor on cargo, &c.....	41 00
	326 40

108 *Rule on claimant.—From minutes of May 11th*, 1865.

UNITED STATES
vs.
SCH'R WATCHFUL and CARGO. } No. 7914.

On motion of the district attorney, the claimant's proctor being present, and accepting service of the rule, ordered, that said claimant show cause on Friday, 19th inst., at 11 a. m., why the vessel and cargo should not be sold by the marshal in due course of law.

Bond for release, filed May 16th, 1865.

UNITED STATES OF AMERICA, *Eastern district of Louisiana:*

Know all men by these presents, that we, John G. Wallis, a resident of Philadelphia, of the State of Pennsylvania, claimant and owner of the vessel and cargo named "Watchful," as principal, and Alfred W. Adolph and John W. Eberman, merchants of the
109 city of Philadelphia, as sureties, are held and firmly bound unto the United States of America, libellant, in the sum of thirty-five thousand six hundred and ninety ($35,690 00) dollars, lawful money of the United States of America, for the payment whereof to the said United States of America, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators firmly by these presents.

Witness our respective names and seals hereunto affixed by us, this day of April, 1865.

Whereas an admiralty warrant was lately issued out of the honorable the district court of the United States of America for the eastern district of Louisiana, at the suit of the United States *vs.* Schooner Watchful and cargo, her tackle, apparel, and furniture, and numbered 7914 on the docket of said court, commanding the marshal to seize and take into his possession the said schooner and cargo, which has been seized accordingly but has been released from said seizure and delivered to John G. Wallis, the claimant and owner thereof, by reason of the signing, sealing, and delivery of these presents, said John G. Wallis having obtained leave of court to bond said property, and filed a claim thereto, which is now of record in the clerk's office of this court:

Now the condition of the above obligation is such, that if the said claimant and sureties abide by all the orders, interlocutory or final, of court, and pay the said libellants the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void, but otherwise shall remain in full force and virtue.

JNO. J. WALLIS. [SEAL.]
A. W. ADOLPH. [SEAL.]
JOHN W. EBERMAN. [SEAL.]

Signed, sealed, and delivered in the presence of—
BENJ. PATTON.
M. H. CALDWELL.

UNITED STATES OF AMERICA, *Eastern district of Pennsylvania:*

Alfred W. Adolph, being duly sworn, deposes and says that he resides in the city of Philadelphia, State of Pennsylvania, and has so resided for the last thirty-eight years; that he is a merchant, and is engaged in business at No. 62 North Second street, in said city, and is the owner of unincumbered real estate in said city, and that the value of his property, over and above all debts, liens, and liabilities against him, is over fifty thousand dollars, and that he is fully responsible for the amount of his obligations in the foregoing bond by him executed.

A. W. ADOLPH.

Sworn to and subscribed before me this fourth day of May, 1865.
BENJ. PATTON, *U. S. Com'r, E. D., Penn'a.*

[5 c. stamp]

UNITED STATES OF AMERICA, *Eastern district of Pennsylvania:*

John W. Eberman, being duly sworn, deposes and says that he resides in the city of Philadelphia, in the State of Pennsylvania; that he is a merchant, and the owner of real estate in said city, and that the value of his property, over and above all his debts, liens, and liabilities against him, is over thirty-five thousand dollars, and that he is fully responsible for the amount of his obligation in the foregoing bond by him executed; that he is a permanent resident of said city, and is at this time a member of the councils of said city.

JOHN W. EBERMAN.

Sworn to and subscribed before me this 5th day of May, 1865.

BENJ. PATTON,
U. S. Com'r, E. D. of Penn'a.

[5-cent stamp.]

112 UNITED STATES OF AMERICA, *Eastern district of Pennsylvania, ss:*

I, Benjamin Patton, United States commissioner, and a clerk of the circuit court of the United States for the eastern district of Pennsylvania, do certify that upon examination of the parties, and upon information from reliable sources, I consider Alfred W. Adolph and John W. Eberman, the sureties above mentioned, good and sufficient as such, and fully responsible for the amount of their obligation in the foregoing bond.

Witness my hand this 5th day of May, 1865.

BENJ. PATTON.

[5-cent stamp.]

I, William Millward, marshal of the United States for the eastern district of Pennsylvania, do certify that I am well acquainted with Alfred W. Adolph and John W. Eberman, the sureties above mentioned, and that I consider them good and sufficient as such, and fully responsible for the amount of their obligation in the foregoing bond.

Witness my hand this 5th day of May, 1865.

WILLIAM MILLWARD,
U. S. Marshal.

[5-cent stamp.]

113 UNITED STATES OF AMERICA, *Eastern district of Pennsylvania, s:*

I, Benjamin Patton, clerk of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit do hereby certify that I am well acquainted with the handwriting of Benjamin Patton, esquire, whose name is subscribed to the annexed certificate, and that the signature to the same is in his proper handwriting; and I do further certify that he was at the time of the signing the same, and still is, a commissioner of the United States, duly appointed by the said circuit court, and authorized by law to take affidavits and acknowledgments of bails, and to do all other acts lawfully pertaining to said office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said circuit court, at Philadelphia, this fifth day of May, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of these United States the eighty-ninth.

[SEAL.] BENJ. PATTON.

[5-cent stamp]

114 *Order approving bond.—From minutes of May 16th,* 1865.

UNITED STATES
vs.
SCH'R WATCHFUL and CARGO. } No. 7914.

Ordered, that the bond for the release of the vessel and cargo, furnished by the claimant, with Alfred W. Adolph and John W. Eber-

man, merchants of the city of Philadelphia, as sureties in the sum of thirty-five thousand six hundred and ninety dollars, be accepted, approved, and filed, and that a writ of release issue, restoring said vessel and cargo to the claimant, he paying all costs of suit.

Order to issue execution.—From minutes of July 20th, 1865.

UNITED STATES
vs.
SCHOONER WATCHFUL and CARGO. } No. 7914.

On motion of Rufus Waples, U. S. att'y, and on suggesting to the court that on the 16th May last the claimant filed his bond for
115 the release of the property seized in this case, but has wholly neglected and failed to comply with the order of court requiring him to pay all costs of suit, it is ordered by the court that judgment be entered for all costs due in this case, and that execution issue for the same forthwith.

Agreement relative to appeal.—Filed August 15th, 1865.

UNITED STATES
vs.
SCH'R WATCHFUL and CARGO. } No. 7914.

It is hereby agreed that the charts of the abovenamed schooner, as well as her log and cargo books, be sent up to the Supreme Court, in original, with the record of appeal.

N. O., August 15th, 1865.

RUFUS WAPLES, *U. S. Att'y.*
WHITAKER & FELLOWS,
Proctors for Claimant and Respondent.

116 District court of the United States, east. dist. of Louisiana.

I hereby certify that the foregoing 115 pages do contain and form a complete and correct transcript of all the proceedings had, documents filed, and evidence adduced at the trial of the case of the United States *vs.* The Schooner Watchful and cargo, No. 7914 of the docket, with the exception of the charts, the log, and cargo books of said schooner, which, under the agreement, are sent up to the Supreme Court of the United States, in original, with this transcript.

In testimony whereof, I hereto set my hand and the seal of our court at New Orleans, this 21st day of August, A. D. 1865, and the 90th year of the American independence.

K. LOEW, *D'y Cl'k.*

Filed November 27, 1865.

In the Supreme Court of the United States.

DECEMBER TERM, 1867.

UNITED STATES, APPELLANTS,
vs.
THE SCHOONER WATCHFUL AND CARGO. } No. 56.

APPEAL FROM THE DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA.

THE CASE.

On September 27, 1864, this capture was made off Ship Island shoals, Gulf of Mexico, about 70 miles from New Orleans, where the vessel was bound, by the U. S. S. Arkansas. Vessel and cargo were brought into New Orleans, and libelled as prize of war on October 1, 1864.

On October 24 vessel and cargo were claimed by John G. Wallis, an alleged citizen of the United States, and resident of Philadelphia. (Rec., p. 16.)

On February 10, 1865, the Court condemned the property as lawful prize of war. (Rec., p. 21.)

On February 14 the claimant moved the Court for a rehearing and new trial of the case, upon sundry grounds set forth in his affidavit, on p. 21 of record.

On March 1, 1865, the Court ordered that the judgment of condemnation be set aside, and the cause reopened, with leave to the claimant to furnish further proof in the cause. (Rec., p. 27.)

Thereupon, the claimant introduced the further proof hereinafter mentioned; and the Court, on March 24, 1865, dismissed the libel, and ordered vessel and cargo to be restored to the claimant, on payment of costs and charges. (Rec., pp. 36, 37.)

From this decree the United States have appealed to this Court.

THE GENERAL FACTS OF THE VOYAGE.

I. The case on the part of the claimant is, that the Watchful sailed from New York in the month of August, 1864, on a voyage to Matamoras, Mexico, for the delivery of five thousand Austrian Garibaldi rifles to the government of the Republic of Mexico, under a contract made with the claimant, a merchant, as alleged, of Philadelphia, by the authorized agents of the Mexican Government; that she proceeded directly to the mouth of the Rio Grande, where she arrived about the 27th of September, 1864, and found Matamoras in the possession of the French; that she sailed thence direct to New Orleans, with the same cargo of arms and other articles that she had carried from New York; that the vessel was captured about sixty miles from New Orleans, in a leaky condition, and unfit for navigation to any other port; and that, in the absence of any hostile interest in vessel or cargo, or any attempt or intention on the part of the vessel to break blockade, the property was not liable to capture or condemnation as prize of war.

The object of the *further proof* given by the claimant was to establish the foregoing state of facts as to the voyage in question.

The main evidence introduced into the cause for this purpose consisted of an alleged contract, dated July 21, 1864, between John G. Wallis, of Philadelphia, and "Bernardo Smith and Justiniano de Zubiria, accredited agents of his Excellency Benito Juarez, President of the federal government of Mexico," by which Wallis agreed to sell to the Mexican government, through said agents, 5,000 Garibaldi rifles at sixteen dollars each; forty thousand dollars to be paid in the United States, in currency, on the delivery of the guns to the vessel; the balance, forty thousand dollars, to be paid, in specie, to the said Wallis at or convenient to *Brownsville* or Matamoras, and before the delivery of the guns from the vessel. The contract, among other noticeable stipulations, provided that the Mexican government should forfeit all right to the guns in the event of the last instalment of the purchase money not being paid within thirty days of the vessel's arrival at *Point Isabel*, or Rio Grande river. (Rec., p. 30.)

The alleged contract further provided: "As regards the expenses of navigation and preparing the vessel for sea, and *all expenses in getting the guns cleared*, (which will be receipted for in a paper accompanying this document, *and which we think it prudent not to specify here*,) we agree that each party pay its one-half of the entire costs and expenses," &c.

This paper is signed by Wallis, and by Smith and Zubiria, and witnessed by J. O. Barclay, the captain of the vessel.

The genuineness and bona fides of this alleged contract were attempted to be proved by one Goicuria, who had a commercial house at Matamoras. (Rec., p. 28.) Captain Barclay, whose name is signed as a wit-

ness to the execution of the contract, was not examined on further proof.

No evidence whatever of the authority of Smith and Zubiria to make such a contract, on behalf of the Mexican government, was adduced, nor was any proof given of the ratification of the agreement by Mr. Romero, the Mexican minister. (See contract, p. 30.)

The residue of the evidence on the part of the claimant, under this order for further proof, related to the condition of the vessel as to seaworthiness at the time of capture, the object being to show that she put into New Orleans in distress, (Rec., pp. 31—33; pp. 24, 26.) Thus much for the voyage as explained by the claimant.

II. The preparatory proofs, and papers found in the vessel, disclose this state of facts: The vessel was registered at New York on July 22, 1864, as the property of John G. Wallis, of Philadelphia. (Rec., p. 15.) The certificate of registry seems to have been the only *bona fide* document on board. On the 18th of August, 1864, she cleared for *Hamburg* at the New York custom-house. The clearance must have been altered after the vessel got to sea, as the word "*Matamoras*" is written over the word "*Hamburg*" in the clearance, and the handwriting of the alteration is said to be that of the captain. (Rec., p. 10.) The shipping articles express a voyage to Hamburg. (Rec., p. 15.) The only bill of lading on board covers 10,000 feet of lumber and 40 barrels of petroleum, and is made out for Hamburg via Matamoras. (Rec. p. 9.) This bill expresses a shipment by *B. Snowden Smith*, unto his own order, and is not signed. There was a paper found called a manifest, but it evidently was never presented at the custom-house, as it

is not signed by the officers of the customs." (Rec. p. 10.) It speaks of a cargo shipped by *John Wallace*, of 40,000 feet of lumber and 40 barrels of petroleum, destined to *Matamoras*. This document was, of course, intended to be employed to simulate a genuine and original manifest of the cargo presented at the custom-house at the time of clearance. The actual cargo on board was 10,000 feet of lumber, 40 barrels of petroleum, and 250 *cases of muskets*. (Rec. p. 41.)

Thus, it appears, every paper on board, except the register, was falsified and simulated. No mention is made in any of the ship's papers of the arms on board.

The master, Barclay, in his examination *in preparatorio*, testified that he knew she had arms on board, (Rec. p. 5,) and says she was bound to Matamoras.

He makes no mention whatever of the false clearance. His testimony is surcharged with prevarication and studied concealment of the fraudulent conduct in making up the papers and in clearing the vessel.

It appears from the testimony of the other witness *in preparatorio* that the schooner anchored off Matamoras for four hours, and then sailed for New Orleans. (Rec. p. 8.)

The other papers found in the vessel were, *first*, a letter signed B. Snowdon Smith, dated Philadelphia, Aug. 11, 1864, and addressed to C. Worthington, Collector at Brownsville, Texas, referring to a shipment of lumber "for warehouse buildings;" (Rec. p. 14,) *second*, a letter of instructions to Captain Barclay, from John G. Wallis, as to the delivery of the arms, and the further employment of the vessel, dated Philadelphia, July 28, 1864; (Rec. pp. 11, 12;) and *third*, a letter signed Bdo. Smith to the Captain of the Port of

Matamoras, introducing to him Captain Barclay, of the Watchful. (Rec. p. 14.)

The letter addressed to the U. S. Collector at Brownsville, if it is a real and not a fictitious paper, shows that the Schooner was destined to the coast of *Texas* for the delivery there of the boards which constituted part of her cargo. Whether the *arms* had a destination, contingent or otherwise, to the same locality may be one of the important questions in the case.

It thus appears:

1. That whatever may have been the real destination of the *arms* and residue of the cargo, a most flagrant fraud was perpetrated upon the law and its officers at New York in respect to the *clearance*. The alleged Hamburg destination was a fiction. The real destination was the neighbourhood of the mouth of the Rio Grande.

2. That the ship's papers were fraudulently prepared so as to simulate a *bona fide* shipment of boards and oil to a neutral port, and to cover up and conceal the *real* cargo and its destination.

3. That a portion of the cargo, the boards and oil, were intended for delivery within the collection district of Brazos Santiago; so that the vessel and a part of the cargo had, at all events, whether the arms were to be delivered in Mexico or not, a destination to the insurrectionary *State of* Texas.

4. That the fraudulent conduct of the parties, the absence of any sufficient evidence to establish the alleged sale and intended delivery of arms to the Mexican government at Matamoras, and the general doubtful and mysterious features of the transactions in which the parties were engaged, justify the belief that the

object of the entire venture was, either absolutely or contingently, to effect a delivery of contraband articles within the enemy's country, whither, it is known, a part of the cargo was absolutely destined.

III. The situation of affairs at Brownsville, at the time of this voyage, was thus:

Sometime in 1863 the Union troops occupied the town, and on February 18, 1864, the President, by his proclamation, relaxed the blockade of the port and declared that a limited trade might be carried on with Brownsville, subject to the laws of the United States and the regulations of the Secretary of the Treasury. (13 Stats. at Large, 740.)

At this time, however, the order of President Lincoln, dated November 21, 1862, was in full force and effect, prohibiting the clearance or exportation of arms from the United States, and revoking all clearances for arms, ammunition, or munitions of war issued theretofore by the Treasury department. This order was not rescinded till May 3, 1865. It is as follows:

EXECUTIVE MANSION,

Washington City, November 21, 1862.

"Ordered, that no arms, ammunition, or munitions of war be cleared, or allowed to be exported from the United States, until further orders. That any clearances for arms, ammunition, or munitions of war, issued heretofore by the Treasury department, be vacated, if the articles have not passed without the United States, and the articles stopped. That the Secretary of War hold possession of the arms, etc., recently seized at Rouse's Point, bound for Canada.

"ABRAHAM LINCOLN."

Under this order the claimant could not have obtained

a clearance for his vessel, with arms on board, for Matamoras, or any other foreign port; and he accordingly concealed the fact of their presence on board from the officers of the customs at New York. In July, 1864, the Union troops evacuated Brownsville, and the rebels occupied the place, whereupon the department of State issued the following:

DEPARTMENT OF STATE,
Washington, August 13, 1864.

Official intelligence having been received at this department that the military forces of the United States have been temporarily withdrawn from Brownsville, in the State of Texas, that port will not be considered as open to foreign or domestic commerce during such withdrawal, but the blockade thereof by the naval forces of the United States will be resumed.

This circular was promulgated by the Treasury Department in the following letter:

TREASURY DEPARTMENT, *August* 20, 1864.

The attention of all officers of the customs is directed to the above notification by the department of State of the resumption of the blockade of the port of Brownsville; and, until otherwise instructed, no clearances will be granted therefor.

GEO. HARRINGTON,
Acting Secretary of the Treasury.

It will be remembered that this vessel left New York on the 18th of August, after it was known that Brownsville was in rebel occupation, and that in the face of this notification of the Secretary of State, she sailed directly for that port for the delivery of a part of the cargo within its limits.

At this period, as stated by the Chief Justice in his opinion in the case of the PETERHOFF, the government granted clearances for Matamoras from New York, on condition of giving bond that no supplies should be furnished to the rebels; such bond being exacted under the authority of the act of May 20, 1862, chap. lxxxi. (12 Stats. at Large, 404.)

An application by the claimant for a clearance to Matamoras would have induced inquiry into the contents of the cargo, and the probable discovery of the arms; and, under the order of President Lincoln, just referred to, such a clearance would have been refused, on any terms, by the officers of the customs. It was to evade all such inquiry, probably, that the resort was had to the false and fraudulent clearance for HAMBURG.

It may be important also to state, that, at this period New Orleans was under *qualified* blockade; trade with that port, under the Proclamation of May 12, 1862, being only permissable under the licenses granted by the Treasury Department. (12 Stats. at Large, 1263.)

POINTS.

In view of, and with reference to, the foregoing statement of the facts of this case, as developed by the preparatory and further proof contained in the record, and by the facts of public history, judicially known to the court, as to the situation and relations of the ports between which this voyage was conducted, we submit the following propositions, which, we think, entitle the United States to a reversal of the decree below:

First point.

Independently of any question whether this property is confiscable as prize of war, on account of owners-

ship or breach of blockake, the present claim should be rejected, on the ground that the voyage, on which the property was captured, was conducted and prosecuted in violation of the laws of the United States.

1. The false clearance, taken out at New York, was in direct contravention of the navigation laws of the country which require every vessel sailing for a foreign port to clear for the port to which she is actually bound, and no other. The object of this fraud, in the application of the claimant for a clearance, is manifest, whether the intention was to land these arms in Texas or Mexico.

If Texas was the destination of the cargo, no clearance for Brownsville, at the date of the voyage, was obtainable, as, on the 13th of August, five days before the vessel sailed, it was publicly announced by the Department of State that the blockade of that port had been resumed. If the destination of the arms, on the contrary, was Matamoras, no clearance for that port was obtainable without such disclosure of the contents of the cargo as would have made known to the officers of the customs that it consisted largely of arms, a fact which would have induced a refusal of such clearance by the officers of the law, under the order of President Lincoln, of the 21st of November, 1862, prohibiting the exportation of arms or munitions of war from the United States. The object, therefore, of this false clearance was to evade and defeat the operation of the laws of the United States in respect to vessels destined for the locality of the mouth of the Rio Grande, and vessels carrying munitions of war, and the method by which those laws were attempted to be evaded, was itself directly in contravention of the

statutes of the United States, applicable to the clearance of vessels from their ports.

2. It is a well settled rule of the English prize courts, that they will reject the claim of any British subject whose property has found its way into the hands of a British captor, if the transaction in which that property had been employed was a transaction contrary to British laws.

Walsingham Packet, 2 Rob., 82.

In that case a British packet ship, carrying cargo in contravention of the statute of 13 and 14, ch. 2, ch. 2, cap. 11, was retaken from the enemy, and the cargo was claimed by a British subject. The claim was dismissed by Sir William Scott on the ground that the carrying of all merchandise on board a packet was prohibited, and the prize court would not restore the property of a British subject who had been found guilty of a violation of the municipal law of his own country.

The Recovery, 6 Rob., 349.

In this case the same judge discriminates between the cases of British subjects and the subjects of foreign States, in respect to the application of the municipal laws of Great Britain to property belonging to those subjects, respectively, captured and adjudicated under the laws of nations, and he holds that, whereas, in the case of British subjects, they will not be allowed to claim property in the prize court, found violating the municipal law of England, the rule is different in the case of foreigners, whose property was seized while engaged in violating that law, and such property will be restored by the courts of prize, if it has not been guilty of violation of

belligerent rights. "As to foreign nations and their subjects," he says: "the breach of our prohibitions of trade are merely *mala prohibita:* it is an offence against the peculiar law of this country, which they may justly demand to have tried more directly under that system of law to which it properly belongs. With respect to a *British* subject, the violation of the laws of his own country carries with it also the *malum in se;* and, therefore, it is no injustice to him that his claim should be subject to rules which this court may not think itself at liberty to apply to the subjects of foreign States."

The Fortuna, 1 Dodson, 84.

In this case the court extended the doctrine above declared on the authority of a decision of the Privy Council, *the Amedie*, 1 Acton, 240, and refused to allow an American to claim, in the prize court, a vessel captured while engaged in the slave trade.

The Donna Marianna, 1 Dod., 92.

The Diana, 1 Dod., 95.

3. On the authority of these adjudications, and in view of the conduct of the parties concerned in this voyage, and the navigation of this vessel, we submit that the claim of John G. Wallis, alleging himself to be a citizen of the United States, and owner of this property, should have been rejected by the district court, and that it was error in that court to restore the property to the claimant, whether it was confiscate as prize of war or not.

Second Point.

The vessel and a portion, at least, of the cargo, viz: the boards and the petroleum, are clearly confiscable as prize of war for breach of the blockade of the har-

bor of Brazos Santiago and Point Isabel, and on that ground, the decree of the District Court should be reversed.

1. It may be admitted, in this connexion, that the *muskets* on board this vessel were intended, in good faith, to be delivered to the Mexican Authorities at Matamoras, and that there was no purpose entertained by this claimant, contingent or otherwise, to place them in the hands of the rebels in Texas. But is clear notwithstanding, on the face of the record, that a part of this cargo, at least, was intended for delivery at some point within the collection district of Brazos Santiago, and the proof indicates Point Isabel or Brazos Santiago as the probable place of intended delivery of the articles referred to; and further, that the vessel, under all the probabilities of the case, must have advanced directly within the limits of the blockade maintained at the places mentioned on the Texan coast, with a view of executing the intention with which the voyage began. We refer, now, chiefly to the boards, of which there were ten or twelve thousand feet in the vessel, and as the petroleum was covered by the same bill of lading, the same destination was undoubtedly impressed upon it as existed in respect to the boards. The bill of lading for this part of the cargo is in the name of *B. Snowden Smith*, as shipper, and a letter of advice, in relation to the boards, written by the same party, on August 11, 1864, at Philadelphia, is found in the record. (Rec., p. 14.) That letter purports to be addressed to Mr. T. C. Worthington, U. S. Collector at Brownsville, and speaks of a shipment of lumber to that port "for warehouse buildings;" and, after referring to the evacuation of Brownsville by the Union troops, says:

"Yet I presume you will remain at *Point Isabel* and the *Brazos*, and will want materials *there*. Asking that you may give all proper facilities to the vessel, as regards *unloading* or otherwise, as may occur, to facilitate despatch," etc.

It would seem, in one view of these papers, that this name, B. Snowden Smith, was a fictitious name, assumed by the owner of the property; as Wallis, the claimant, in his letter to the master, written on July 28, at Philadelphia, directs him (the master) to *sell the lumber*, on arriving at his *destination*, after the lapse of five days, if no instructions await him. Thus, it seems, the lumber was to be sold in one contingency; and the other evidence indicates Texas as the place of sale, and not Mexico. It is hard to tell which letter of these two is to be regarded as real; and, indeed, it may be doubted whether both of them are not fictitious. This doubt is strengthened by reference to the paper styled the "manifest." (Rec., p. 10,) which speaks of *John Wallace* as shipper of the cargo, and of the cargo as 40,000 feet of boards. We know there were only ten or twelve thousand feet on board.

Further than this, the alleged contract with the Mexican agents, introduced by the claimant, contemplated that the vessel would be at *Point Isabel* in the course of her voyage. (Rec., p. 30.) This contract stipulates that a second instalment of the purchase-money of the arms was to be paid "within 30 days of the arrival of the vessel at Point Isabel or Rio Grande river."

The testimony of the witnesses examined *in preparatorio* (the master and one of the seamen) does not give any precise information as to the location of the vessel

while she laid off the Rio Grande, nor indeed as to any of her movements while there. But it may fairly be inferred, if the fact appear, (as it clearly does,) that a part of the cargo was deliverable at Brazos Santiago or Point Isabel, that she advanced to the Texan coast with the intention of so delivering it.

If the court believe there was, on the part of this vessel, an actual entry within the limits of the blockade, and therefore an actual breach of blockade, her liability to capture and condemnation, on her outward voyage, for that offence, is clear under all the authorities. There can be no question here, such as arose in the case of *The Charlotta*, (1 Edw., 252,) as to the purpose of the vessel in going within the blockaded limits, seeing that she came out without delivering the cargo, or the part of it which we have supposed was intended for delivery within those limits. If the evidence just referred to amounts to anything, it shows that the object was to deliver a portion of the cargo on the Texan coast. The intent to break the blockade was thus carried into execution, and we have the right to presume that the cargo was not delivered from some unexpected change of circumstances. The right of capture, for this violation of the blockade, continued throughout the return voyage, as appears from the following authorities:

Frederick Molke, 1 Rob., 87.

Christiansberg, 6 Rob., 381.

In the latter case a vessel went into Rotterdam and was there blockaded. Under an order in council she was at liberty to leave that port for a *neutral port*. She cleared for *Smyrna*, a neutral port, but sailed for, and entered, *Alicant*. On the voyage from *Alicant* she was

captured, and the court condemned her for breach of the blockade of *Rotterdam*. Sir William Scott said: "The permission to go to a neutral port, if accepted, implies a contract that the destination should be *bona fide* pursued. The vessel avails herself of this indulgence, and comes out with a professed intention of acting conformably to the order. But the fact turns out afterwards that she deposits her cargo in a port to which she would not have been permitted to go if the real intention had been disclosed. This is unquestionably an act of perfidy; and I ask, by what means can the order be maintained, or such conduct be repressed, unless by the application of the penalty to the subsequent voyage."

See also—

The Walvaart van Pillaw, 2 Rob., 128.

Juffrow Maria Schroeder, 3 Rob., 153.

The Lisette, 6 Rob., 387.

It is scarcely necessary, in the present case, to resort to the principle of right of capture, for breach of blockade, on the next *subsequent* voyage, as the voyage from New York to the Rio Grande and thence to New Orleans, was one continuous voyage, so in fact and so in the contemplation of the parties, as testified by the master. (Rec., p. 6, int. 12.)

Third Point.

The gross and criminal fraud perpetrated by the claimant in clearing falsely for Hamburg; in carrying false and simulated papers; and in concealing on board the vessel contraband of war, must, under the circumstances of such a voyage as this, operate to preclude him from the benefit of all further proof, and the effect

of such preclusion will be, under well settled principles of prize law, to subject vessel and cargo to liability to condemnation as prize of war.

This is undoubtedly the true legal ground on which to rest the case, and it will support a decree of condemnation of the vessel, as well as the *entire* cargo.

Such a fraud as this has scarcely ever been committed in the history of war. Under any circumstances of a voyage, at this time, from New York to the mouth of the Rio Grande, with contraband of war, the claimant could not be entitled to restitution without full and conclusive proof of absence of hostile interest, and innocency of intention as to the destination. But when a claimant admits the commission of such frauds as are shown by this record, when his case is tainted from first to last with deception, falsification, simulation, and falsehood, he closes the doors at once to any benefit of explanation, and thus seals his fate at the hands of the prize court.

Vrow Hermina, 1 Rob., 165.
Juffrow, Anna, *ib.*, 124.
Eenrom, 2 Rob., 15.
Mars., 6 Rob., 79.
Flad. Oyen, 1 Rob., 134.
Ebenezer, 6 Rob., 250.
Carrington *v.* Ins. Co., 8 Peters, 321.

In Oswell *v.* Vigne, (15 East., 75,) Lord Ellenborough laid down the rule that the carrying of simulated papers was an EFFICIENT CAUSE OF CONDEMNATION.

(See also 2 Wheaton, App., 39.)

Fourth Point.

But the vessel and cargo are confiscable for attempting to enter New Orleans without the authority re-

quired therefor by the Proclamation of May 12, 1862; relaxing the blockade of that port.

1. Except as relaxed by that Proclamation, the blockade of New Orleans was in full force and operation in September, 1864, when this vessel sailed from the Rio Grande; and in order to entitle her to sail therefor, she was required to be licensed, as provided in the Proclamation and the subjoined regulations of the Secretary of the Treasury. (12 Stats., 1,264.)

2. The attempt to excuse her entrance of New Orleans by proof of the condition of the vessel must be held of no avail, as it is certain the return voyage, under the original design of the parties, was to have been to New Orleans. (See master's testimony, Rec., p. 6, int. 12.)

Fifth Point.

The claim of Wallis for the *boards* and the forty barrels of *petroleum*, constituting part of the cargo, must certainly be rejected, as it is unsupported by any documentary evidence, and, in fact, falsified by the bill of lading and the letter of advice, to which reference has been made; and as to the residue of the cargo, to wit, the *muskets*, we submit that the further proof adduced by Wallis does not establish his claim of ownership, and his claim therefor should accordingly be rejected.

Sixth Point.

Lastly we submit, that if this property is not confiscable, in the present proceedings, as prize of war, the case should be remanded to the court below for proceedings to enforce the forfeiture of the property under

the municipal law. (United States *v.* Weed and others. Dec. term, 1866. No. 103.) It would be a disgraceful reflection, we hold, upon the penal laws of the United States, if property like this, were capable, at a time of insurrection and war, of proceeding from one of our ports, under the circumstances attending this voyage, *cy pres* close up to the enemy's blockaded coast, and of returning to another of our ports in a still insurgent State, with perfect immunity from capture or liability to seizure. But the act of July 18, 1861, sec. 5, which confiscates property coming from an insurrectionary state or section to the rest of the United States, has not left the government in such case without a remedy. (12 Stats. 257.)

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